



Alameda County Employees' Retirement Association  
**BOARD OF RETIREMENT**

***HYBRID (IN-PERSON and VIRTUAL) NOTICE and AGENDA***

**THIS MEETING WILL BE CONDUCTED IN PERSON AND VIA TELECONFERENCE [SEE SECTION 42 OF EXECUTIVE ORDER N-08-21 ATTACHED AT THE END OF THIS AGENDA.]**

**ACERA MISSION:**

***To provide ACERA members and employers with flexible, cost-effective, participant-oriented benefits through prudent investment management and superior member services.***

**Thursday, September 16, 2021  
2:00 p.m.**

<b>LOCATION AND TELECONFERENCE</b>	<b>BOARD OF RETIREMENT - MEMBERS</b>	
<b>ACERA C.G. "BUD" QUIST BOARD ROOM 475 14<sup>TH</sup> STREET, 10<sup>TH</sup> FLOOR OAKLAND, CALIFORNIA 94612-1900 MAIN LINE: 510.628.3000 FAX: 510.268.9574  <a href="https://zoom.us/join">https://zoom.us/join</a> Webinar ID: 823 0637 1558 Passcode: 403633</b>	<b>DALE AMARAL CHAIR</b>	<b>ELECTED SAFETY</b>
	<b>JAIME GODFREY FIRST VICE-CHAIR</b>	<b>APPOINTED</b>
	<b>LIZ KOPPENHAVER SECOND VICE-CHAIR</b>	<b>ELECTED RETIRED</b>
	<b>OPHELIA BASGAL</b>	<b>APPOINTED</b>
	<b>KEITH CARSON</b>	<b>APPOINTED</b>
	<b>TARRELL GAMBLE</b>	<b>APPOINTED</b>
	<b>HENRY LEVY</b>	<b>TREASURER</b>
	<b>DARRYL WALKER</b>	<b>ELECTED GENERAL<sup>1</sup></b>
	<b>GEORGE WOOD</b>	<b>ELECTED GENERAL</b>
	<b>NANCY REILLY</b>	<b>ALTERNATE RETIRED<sup>2</sup></b>
	<b>VACANT</b>	<b>ALTERNATE SAFETY</b>

<sup>1</sup> Alternate Safety Member Trustee Walker is filling the vacancy created by Trustee Rogers' retirement. See Gov't Code §§ 31524, 31520.1(b).

<sup>2</sup> The Alternate Retired Member votes in the absence of the Elected Retired Member, or, if the Elected Retired Member is present, then votes if both Elected General members, or the Safety Member and an Elected General member, are absent.

*Note regarding accommodations:* The Board of Retirement will provide reasonable accommodations for persons with special needs of accessibility who plan to attend Board meetings. Please contact ACERA at (510) 628-3000 to arrange for accommodation.

*Note regarding public comments:* Public comments are limited to four (4) minutes per person in total.

The order of agenda items is subject to change without notice. Board and Committee agendas and minutes, and all documents distributed to the Board or a Committee in connection with a public meeting (unless exempt from disclosure), are available online at [www.acera.org](http://www.acera.org).

The Board of Retirement welcomes you to its meeting and your interest is appreciated. Due to the pandemic, in-person public participation at the meeting may be limited on a first-come-first-served basis to maintain social distancing. You may also observe the meeting and address the Board by Zoom as follows:

**VIA ZOOM (TELECONFERENCE)**

**\*ZOOM INSTRUCTIONS:**

The public can view the Teleconference and comment via audio during the meeting.  
To join this Teleconference, please click on the link below.

<https://zoom.us/join>

**Webinar ID: 823 0637 1558**

**Passcode: 403633**

For help joining a Zoom meeting, see: <https://support.zoom.us/hc/en-us/articles/201362193>

**1. CALL TO ORDER:**

**2. ROLL CALL:**

**3. PUBLIC COMMENT:**

**4. CONSENT CALENDAR:**

The Board will adopt the entire Consent Calendar by a single motion, unless one or more Board members remove one or more items from the Consent Calendar for separate discussion(s) and possible separate motion(s).

**A. APPROVE APPLICATIONS FOR SERVICE RETIREMENT:**

*Appendix A*

**B. APPROVE APPLICATIONS FOR RETIREMENT, DEFERRED:**

*Appendix B*

*Appendix B-1*

**C. APPROVE APPLICATIONS FOR DEFERRED TRANSFER:**

*None*

**D. LIST OF DECEASED MEMBERS:**

*Appendix D*

**E. APPROVE REQUEST(S) FOR UP TO 130 BI-WEEKLY PAYMENTS TO RE-DEPOSIT CONTRIBUTIONS AND GAIN CREDIT:**

*Appendix E*

**F. APPROVE STAFF RECOMMENDATIONS (UNCONTESTED) FOR DISABILITY RETIREMENTS:**

*Appendix F*

**G. APPROVE HEARING OFFICER RECOMMENDATIONS FOR DISABILITY RETIREMENTS:**

*None*

**H. APPROVAL of COMMITTEE and BOARD MINUTES:**

*August 19, 2021 Governance Committee Minutes*  
*August 19, 2021 Minutes of the Regular Board Meeting*  
*September 1, 2021 Retirees Committee Minutes*  
*September 8, 2021 Investment Committee Minutes*

**I. MISCELLANEOUS MATTERS:**

*Operating Expenses as of 07/31/21*  
*Approve Staff Recommendation regarding County of Alameda's amendment to*  
*Oversight Facilities Management/Staff Development – 42C*

-----End of Consent Calendar-----  
(MOTION)

**REGULAR CALENDAR**  
**REPORTS AND ACTION ITEMS**

**5. DISABILITY AND DEATH BENEFIT CLAIMS**

- A.** Discussion and Possible Motion on Claim for Service-Connected Surviving Spouse Allowance

This item will be addressed in open session (materials are included in the public agenda packet), but the Board may go into Closed Session to received advice from counsel, per Gov't Code § 54956.9(d)(2)(Conference With Legal Counsel—Anticipated Litigation: significant exposure to litigation):

Deceased Member: Oscar Rocha

Surviving Spouse: Carol Maureen Ennor

Non-Service-Connected Surviving Spouse Allowance Effective: July 24, 2020

**6. COMMITTEE REPORTS, RECOMMENDATIONS AND MOTIONS:**

- A. Retirees:** **[See September 1, 2021 Retirees Committee Agenda Packet for public materials related to the below listed items.]**

1. Summary of September 1, 2021 Meeting.
2. Motion to offer the Silver & Fit benefit for Kaiser Permanente Senior Advantage plan enrollees for the 2022 Plan Year at no cost as a “trial”, and decide whether to continue this benefit starting with the 2023 Plan Year, based on the cost for the benefit at that time.
3. Motion to offer the optional Meals Rider for Kaiser Permanente Senior Advantage plan enrollees beginning in Plan Year 2022, at an estimated annual cost of \$86,016.

**B. Investment: [See September 8, 2021 Investment Committee Agenda Packet for public materials related to the below listed items.]**

1. Summary of September 8, 2021 Meeting.
2. Discussion and possible motion to adopt an up to \$70 million Investment in Ares Senior Direct Lending Fund II as part of ACERA's Private Credit Portfolio, pending completion of Legal and Investment due diligence and successful contract negotiations.
3. Motion to adopt an up to \$25 million Investment in Summit Partners Growth Equity Fund XI as part of ACERA's Private Equity Portfolio – Venture Capital, pending completion of Legal and Investment due diligence and successful contract negotiations.

**7. NEW BUSINESS:**

- A. Motion to select the Chief Executive Officer (or his designee) to vote ACERA's Proxy on behalf of the Board of Retirement at the State Association of County Retirement Systems (SACRS) Fall Conference Business Meeting.
- B. Motion to select, and provide direction to, a Trustee to vote ACERA's Proxy on behalf of the Board of Retirement at the Council of Institutional Investors' (CII) Fall Conference Business Meeting.
- C. Discussion and possible motion to authorize and direct ACERA Staff to exercise the Board's power and perform the Board's duty to retire members as of the date ACERA issues the first retirement allowance payment, pursuant to Gov't Code § 31670(b).
- D. Chief Executive Officer's Report.

**8. CONFERENCE/ORAL REPORTS:**

**9. ANNOUNCEMENTS:**

**10. BOARD INPUT:**

**11. ESTABLISHMENT OF NEXT MEETING:**

**Thursday, October 21, 2021 at 2:00 p.m.**



**12. CLOSED SESSION:**

- A. Existing Litigation pursuant to Government Code Section 54956.9(d)(1):  
*Alameda Health System v. ACERA*, San Francisco County Superior Court,  
No. CGC-19-516795.
- B. Conference With Legal Counsel--Existing Litigation (Gov't Code § 54956.9(d)(1)):  
*Alameda County Deputy Sheriff's Association v. Alameda County Employees'*  
*Retirement Association*, Contra Costa County Superior Court, Case No. MSN12-1870.

**13. REPORT ON ACTION TAKEN IN CLOSED SESSION:**

**14. ADJOURNMENT:**

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**APPENDIX A  
APPLICATION FOR SERVICE RETIREMENT**

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ALLEN, Michael  
Effective: 7/1/2021  
Sheriff's Office

GALINDO, Gustavo  
Effective: 7/10/2021  
District Attorney

ALTAMIRANO, Claudette  
Effective: 7/24/2021  
Health Care Services Agency

HO, Yoke  
Effective: 8/10/2021  
Health Care Services Agency

ARGULA, Dawn  
Effective: 7/28/2021  
Board of Supervisors

PHILLIP, Victoria  
Effective: 7/10/2021  
Social Services Agency

BALANDRA, Joyce  
Effective: 7/10/2021  
Probation Department

PORTER, Brenda  
Effective: 6/2/2021  
Social Services Agency

BUNKER-ALBERTS, Michele  
Effective: 6/15/2021  
Alameda Health System

REITER, Marianne  
Effective: 6/26/2021  
Auditor-Controller

CASTELLVI, Delia  
Effective: 7/10/2021  
Health Care Services Agency

ROBERSON, Loretta  
Effective: 7/10/2021  
Sheriff's Office

DRENICK, Teresa  
Effective: 7/24/2021  
District Attorney

ROBINSON, Cora  
Effective: 5/29/2021  
Social Services Agency

EAVES, Damon  
Effective: 5/15/2021  
Health Care Services Agency

SALTZMAN, Paula  
Effective: 6/28/2021  
Alameda Health System

EDWARDS, Cheryl  
Effective: 6/25/2021  
Superior Court

STONE, Lance  
Effective: 6/26/2021  
Alameda Health System

ESPINOZA, Caleen  
Effective: 5/29/2021  
Superior Court

VILLASENOR-MURPHY, Edelmira  
Effective: 7/10/2021  
Health Care Services Agency

VON GELDERN, Eric  
Effective: 7/10/2021  
District Attorney

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**APPENDIX A  
APPLICATION FOR SERVICE RETIREMENT**

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WRIGHT, Roger  
Effective: 6/30/2021  
Alameda Health System

YOUNG, Andrew  
Effective: 7/10/2021  
Community Development Agency

ZHANG, Danni  
Effective: 7/10/2021  
Social Services Agency

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**APPENDIX B  
APPLICATION FOR DEFERRED RETIREMENT**

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BALMES, Alma A.  
County Administrator  
Effective Date: 3/5/2021

CORPUZ, Alan P.  
Sheriff's Office  
Effective: 2/27/2021

FANFA, Amanda M.  
Sheriff's Office  
Effective: 2/26/2021

GREEN, Saundra L.  
Superior Court  
Effective: 7/23/2021

HUANG, Sandra Y.  
Health Care Services Agency  
Effective: 2/19/2021

MCDONNELL, Thomas  
Community Development Agency  
Effective: 7/16/2021

NAGY, Jeanne M.  
Superior Court  
Effective: 7/16/2021

RANSOM, Brandi S.  
Social Services Agency  
Effective: 7/23/2021

TUTOL, William B.  
Health Care Services Agency  
Effective: 7/30/2021

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**APPENDIX B-1  
APPLICATION FOR NON-VESTED DEFERRED**

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ALTER, Harrison J.  
Health Care Services Agency  
Effective Date: 2/5/2021

MENDOZA, Jonathan D.  
Alameda Health System  
Effective: 7/9/2021

BEYROUTI, Seryn  
Alameda Health System  
Effective: 7/23/2021

MOLINA-PHILLIPS, Joann  
Alameda Health System  
Effective: 7/6/2021

CERVANTES, Felipe  
General Services Agency  
Effective: 7/27/2021

PIPER, John  
General Services Agency  
Effective: 6/11/2021

CHIN, Patricia M.  
Health Care Services Agency  
Effective: 2/5/2021

RALLANKA, Reena Faith B.  
Alameda Health System  
Effective: 4/30/2021

FLORES, Jessica  
Alameda Health System  
Effective: 4/16/2021

RHONE, Sade V.  
Alameda Health System  
Effective: 7/9/2021

FURTADO, Melissa  
Superior Court  
Effective: 5/6/2021

ROWLEY, Heather M.  
Alameda Health System  
Effective: 7/9/2021

HAMBLIN, Dallas C.  
Sheriff's Office  
Effective: 8/6/2021

WEINBERGER, Brian E.  
County Administrator  
Effective: 8/6/2021

LAITY, Hayley V.  
County Administrator  
Effective: 4/16/2021

WU, Tin Nok  
District Attorney  
Effective: 8/6/2021

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**APPENDIX D  
LIST OF DECEASED MEMBERS**

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CARTER, Delores  
Social Services Agency  
8/17/2021

COSTAIN, John  
Public Defender  
8/14/2021

CHAMBERS, Jill  
District Attorney  
7/24/2021

COULTER, Sandra  
Health Care Services Agency  
7/20/2021

COMELO, Ernest  
Social Services Agency  
8/14/2021

DE LA TORRE, Raquel  
Health Care Services Agency  
7/13/2021

**APPENDIX D  
LIST OF DECEASED MEMBERS**

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DE OCAMPO, Norma Sheriff's Office 7/22/2021	NAVA, Patricia Ann Superior Court 8/5/2021
DEGARMO, Ramona Non-Mbr Survivor of David Degarmo 7/23/2021	NISLEIT, Kathleen Public Works Agency 8/17/2021
DELGADO, Robert Sheriff's Office 8/4/2021	ODELL, Betty Non-Mbr Survivor of David Odell 8/7/2021
DELPHEY, William Probation Department 7/30/2021	O'TOOLE, Thomas Public Defender 8/21/2021
ELLIS, Robert Information Technology Department 8/7/2021	PANGASNAN, Annie Sheriff's Office 8/4/2021
FLORES, Alma Probation Department 8/18/2021	PRIEST, Carolyn Probation Department 8/28/2021
FULGADO, Samuel Alameda Health System 7/17/2021	QUAN, Mely Alameda Health System 8/8/2021
GULSETH, Bridget Non-Mbr Survivor of Charles Gulseth 8/25/2021	RIFFEL, Louise Non-Mbr Survivor of Edward Riffel 7/25/2021
KELLY, Jesse General Services Agency 7/28/2021	SHANER, Robert Probation Department 8/3/2021
LAURICELLA, Nilda Sheriff's Office 8/5/2021	SIMS, Arthur Superior Court 7/31/2021
MEYER, Carleton Public Defender 8/4/2021	STINSON, Ethlyn Alameda Health System 8/16/2021
	VAUGHN, Dorothy Alameda Health System 7/10/2021



42) Executive Order N-29-20, Paragraph 3, is withdrawn and replaced by the following text:

Notwithstanding any other provision of state or local law (including, but not limited to, the Bagley-Keene Act or the Brown Act), and subject to the notice and accessibility requirements set forth below, a local legislative body or state body is authorized to hold public meetings via teleconferencing and to make public meetings accessible telephonically or otherwise electronically to all members of the public seeking to observe and to address the local legislative body or state body. All requirements in both the Bagley-Keene Act and the Brown Act expressly or impliedly requiring the physical presence of members, the clerk or other personnel of the body, or of the public as a condition of participation in or quorum for a public meeting are hereby waived.

In particular, any otherwise-applicable requirements that

- (i) state and local bodies notice each teleconference location from which a member will be participating in a public meeting;
- (ii) each teleconference location be accessible to the public;
- (iii) members of the public may address the body at each teleconference conference location;
- (iv) state and local bodies post agendas at all teleconference locations;
- (v) at least one member of the state body be physically present at the location specified in the notice of the meeting; and
- (vi) during teleconference meetings, a least a quorum of the members of the local body participate from locations within the boundaries of the territory over which the local body exercises jurisdiction

are hereby suspended.

A local legislative body or state body that holds a meeting via teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically, consistent with the notice and accessibility requirements set forth below, shall have satisfied any requirement that the body allow members of the public to attend the meeting and offer public comment. Such a body need not make available any physical location from which members of the public may observe the meeting and offer public comment.

**Accessibility Requirements:** If a local legislative body or state body holds a meeting via teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically, the body shall also:

- (i) Implement a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities, consistent with the Americans with Disabilities Act and resolving any doubt whatsoever in favor of accessibility; and
- (ii) Advertise that procedure each time notice is given of the means by which members of the public may observe the meeting and offer public comment, pursuant to subparagraph (ii) of the Notice Requirements below.

Notice Requirements: Except to the extent this Order expressly provides otherwise, each local legislative body and state body shall:

- (i) Give advance notice of the time of, and post the agenda for, each public meeting according to the timeframes otherwise prescribed by the Bagley-Keene Act or the Brown Act, and using the means otherwise prescribed by the Bagley-Keene Act or the Brown Act, as applicable; and
- (ii) In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, also give notice of the means by which members of the public may observe the meeting and offer public comment. As to any instance in which there is a change in such means of public observation and comment, or any instance prior to the issuance of this Order in which the time of the meeting has been noticed or the agenda for the meeting has been posted without also including notice of such means, a body may satisfy this requirement by advertising such means using "the most rapid means of communication available at the time" within the meaning of Government Code, section 54954, subdivision (e); this shall include, but need not be limited to, posting such means on the body's Internet website.

All of the foregoing provisions concerning the conduct of public meetings shall apply through September 30, 2021.



**August 19, 2021**  
**Minutes of the Regular Board Meeting**  
**For approval under September 16, 2021**  
**Board “Consent Calendar”**



**ALAMEDA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION  
BOARD OF RETIREMENT  
MINUTES**

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**THIS MEETING WAS CONDUCTED IN-PERSON and VIA TELECONFERENCE WITH VIDEO**

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**Thursday, August 19, 2021**

Vice-Chair Jaime Godfrey called the meeting to order at 2:00 p.m.

Trustees Present: Ophelia Basgal  
Keith Carson  
Tarrell Gamble  
Jaime Godfrey  
Liz Koppenhaver  
Henry Levy  
George Wood  
Darryl Walker (*Arrived After Roll Call*)  
Nancy Reilly (*Alternate*)

Trustees Excused: Dale Amaral

Staff Present: Victoria Arruda, Human Resource Officer  
Angela Bradford, Executive Secretary  
Sandra Dueñas-Cuevas, Benefits Manager  
Kathy Foster, Assistant Chief Executive Officer  
Jessica Huffman, Benefits Manager  
Harsh Jadhav, Chief of Internal Audit  
Vijay Jagar, Retirement Chief Technology Officer, ACERA  
David Nelsen, Chief Executive Officer  
Jeff Rieger, Chief Counsel  
Betty Tse, Chief Investment Officer

Staff Excused: Margo Allen, Fiscal Services Officer

**PUBLIC INPUT**

None.

**CONSENT CALENDAR  
REPORTS AND ACTION ITEMS**

**APPROVAL of APPLICATIONS FOR SERVICE RETIREMENT**

*Appendix A*

**APPROVAL of APPLICATIONS FOR RETIREMENT, DEFERRED**

*Appendix B*

*Appendix B-1*

**APPROVAL of APPLICATIONS FOR DEFERRED TRANSFER**

*None*

**LIST OF DECEASED MEMBERS**

*Appendix D*

**APPROVAL of REQUEST FOR 130 BI-WEEKLY PAYMENTS TO RE-DEPOSIT  
CONTRIBUTIONS AND GAIN CREDIT**

*Appendix E*

**APPROVAL of STAFF RECOMMENDATIONS (UNCONTESTED) FOR  
DISABILITY RETIREMENTS**

*Appendix F*

**APPROVAL of HEARING OFFICER RECOMMENDATIONS FOR DISABILITY  
RETIREMENTS**

*None*

**APPROVAL of COMMITTEE and BOARD MINUTES**

*July 14, 2021 Investment Committee Minutes*

*July 15, 2021 Minutes of the Regular Board Meeting*

*August 4, 2021 Operations Committee Minutes*

*August 4, 2021 Retirees Committee Minutes*

*August 11, 2021 Investment Committee Minutes*

**MISCELLANEOUS MATTERS**

*Quarterly Report on Member Under/Overpayments*

*2<sup>nd</sup> Quarter Call Center Report*

*Approve Staff Recommendation regarding Alameda Health System's New  
Pay Item/Code Certified or Registered Technicians – 21A*

*Approve Staff Recommendations regarding the County of Alameda's New Pay Items/Codes:*

- Training & Compliance Coordinator – 42R*
- Lead Water Facilities Supervisor – 42S*

**21-56**

**It was moved by Ophelia Basgal and seconded by Liz Koppenhaver that the Board adopt the Consent Calendar, with revisions to the July 15, 2021 Board minutes. The motion carried 8 yes (*Basgal, Carson, Gamble, Godfrey, Koppenhaver, Levy, Reilly, Wood*), 0 no, and 0 abstentions. *Trustee Walker was not present for the vote on the motion.***

**REGULAR CALENDAR**  
**REPORTS AND ACTION ITEMS**

**DISABILITIES, CURRENT AND CONTINUING RECOMMENDATIONS AND MOTIONS**

**This Item will be addressed in Closed Session, pursuant to Gov't Code § 54957(b)**

Consideration of Examination of Service-Connected Disability Retiree, Pursuant to Gov't Code § 31729:

Miya Gardere, Eligibility Service Tech III, Social Services Agency  
Effective Disability Retirement Date: December 17, 2017

The Board reconvened into Open Session and the following Trustees returned:  
***Basgal, Carson, Gamble, Godfrey, Koppenhaver, Levy, Reilly, Walker and Wood***

After discussion, the Board passed the following motion:

**21-57**

**Chief Counsel Jeff Rieger reported that, in Closed Session, the Board decided to put the Miya Gardere Disability Hearing Officer Process on hold and address the matter again at the February 17, 2022 Board meeting. The votes were as follows: 5 yes (*Gamble Godfrey, Koppenhaver, Levy, Wood*), 3 no (*Basgal, Carson, Walker*), and 0 abstentions.**

**COMMITTEE REPORTS, RECOMMENDATIONS AND MOTIONS**

*This month's Committee reports were presented in the following order:*

***Operations:***

Liz Koppenhaver gave an oral report stating that the Retirees Committee met on August 4, 2021 and was presented with, reviewed information for, and discussed the following Information Items: ***1)*** Operating Expenses as of 06/30/2021; ***2)*** Quarterly Financial Statements as of 06/30/2021; ***3)*** Quarterly Cash Forecast Report; ***4)*** Board Member Conference Expense Report as of 06/30/2021; ***5)*** Senior Manager Conference and Training Expense Report as of 06/30/2021; ***6)*** Mid-Year review of 2021 ACERA Operating Expense Budget; and ***7)*** Update on Disability Cases Provided by Managed Medical Review Organization (MMRO).

***Retirees:***

Liz Koppenhaver gave an oral report stating that the Retirees Committee met on August 4, 2021 and was presented with, reviewed information for, and discussed continuing the dental plan contributions for Plan Year 2022.

**21-58**

**It was moved by Liz Koppenhaver and seconded by Ophelia Basgal that the Board continue the dental plan contributions for Plan Year 2022, which provides a monthly subsidy equal to the single-party dental plan coverage premium of \$44.15 for the PPO plan and \$22.18 for the DeltaCare USA plan for retirees who are receiving ACERA allowances with ten or more years of ACERA service, are service connected disability retirees, or are non-service connected disability retirees as of January 31, 2014. This is a non-vested benefit funded by contributions from the ACERA employers to the 401(h) account. After contributions are made in accordance with the County Employees Retirement Law, ACERA treats an equal amount of Supplemental Retiree Benefit Reserve assets as employer contributions for pensions. The motion carried 8 yes (*Basgal, Carson, Gamble, Godfrey, Koppenhaver, Levy, Walker, Wood*), 0 no, and 0 abstentions.**

Trustee Koppenhaver further reported that the Committee was presented with, reviewed information for, and discussed continuing the vision plan contributions for Plan Year 2022.

**21-59**

**It was moved by Liz Koppenhaver and seconded by George Wood that the Board continue the vision plan contributions for Plan Year 2022, which provides a monthly subsidy equal to the single-party vision plan coverage premium of \$3.97 for retirees who are receiving ACERA allowances with ten or more years of ACERA service, are service connected disability retirees, or are non-service connected disability retirees as of January 31, 2014. This is a non-vested benefit funded by contributions from the ACERA employers to the 401(h) account. After contributions are made in accordance with the County Employees Retirement Law, ACERA treats an equal amount of Supplemental Retiree Benefit Reserve assets as employer contributions for pensions. The motion carried 8 yes (*Basgal, Carson, Gamble, Godfrey, Koppenhaver, Levy, Walker, Wood*), 0 no, and 0 abstentions.**

Trustee Koppenhaver further reported that the Committee was presented with, reviewed information for, and discussed the following Information Items: *1)* Review of Dental and Vision Plans Premiums for 2022; and *2)* Miscellaneous Updates.

Minutes of the meeting were approved as part of the Consent Calendar.

***Investment:***

George Wood gave an oral report stating that the Investment Committee met on August 11, 2021 and was presented with, reviewed information for, and discussed approval of the Proposed Timeline, Minimum Qualifications, and Evaluation Matrix for ACERA's Absolute Return (Custom Fund of Hedge Funds) Manager Search.

**21-60**

**It was moved by George Wood and seconded by Liz Koppenhaver that the Board approve the Proposed Timeline, Minimum Qualifications, and Evaluation Matrix for ACERA's Absolute Return (Custom Fund of Hedge Funds) Manager Search. The motion carried 8 yes (*Basgal, Carson, Gamble, Godfrey, Koppenhaver, Levy, Walker, Wood*), 0 no, and 0 abstentions.**

Trustee Wood further reported that the Committee was presented with, reviewed information for, and discussed an Information Item regarding proxy voting education and ACERA's *Proxy Voting Policy*.

Minutes of the meeting were approved as part of the Consent Calendar.

***Governance:***

Ophelia Basgal gave an oral report stating that the Governance Committee met earlier that day and was presented with, reviewed information for, and discussed the Governance Committee's recommendation to affirm the *Securities Litigation Policy* without revisions.

**21-61**

**It was moved by Ophelia Basgal and seconded by George Wood that the Board affirm the *Securities Litigation Policy* without revisions, as recommended by the Governance Committee. The motion carried 7 yes (*Basgal, Gamble, Godfrey, Koppenhaver, Levy, Walker, Wood*), 0 no, and 1 abstention (*Carson*).**

Trustee Basgal further reported that the Committee was presented with, reviewed information for, and discussed the Governance Committee's recommended revisions to the *Record Retention Policy*.

**21-62**

**It was moved by Ophelia Basgal and seconded by George Wood that the Board adopt the Governance Committee's recommended revisions to the *Record Retention Policy*, which were shown in the redline in the Governance Committee agenda packet. The motion carried 7 yes (*Basgal, Gamble, Godfrey, Koppenhaver, Levy, Walker, Wood*), 0 no, and 1 abstention (*Carson*).**

Trustee Basgal further reported that the Committee was presented with, reviewed information for, and discussed the Governance Committee's recommended revisions to the *Outside Counsel Policy*.

**21-63**

**It was moved by Ophelia Basgal and seconded by Liz Koppenhaver that the Board adopt the Governance Committee's recommended revisions to the *Outside Counsel Policy*, which were shown in the redline in the Governance Committee agenda packet, including a revision to re-insert a paragraph (Policy Guidelines, Page 2, Section III.B.) that was inadvertently deleted that relates to the Chief Executive Officer and Chief's Counsel's ability to hire Consultants, Investigators, etc. The motion carried 5 yes (*Basgal, Gamble, Godfrey, Koppenhaver, Levy*), 0 no, and 3 abstentions (*Carson, Walker, Wood*).**

Trustee Basgal further reported that the Committee was presented with, reviewed information for, and discussed the Governance Committee's recommended revisions to the *Retiree Payroll Deduction Policy*.

**21-64**

**It was moved by Ophelia Basgal and seconded by George Wood that the Board adopt the Governance Committee's recommended revisions to the *Retiree Payroll Deduction Policy*, which were shown in the redline in the Governance Committee agenda packet, including a revision (Policy Guidelines, Page 2, Section III.D.) delegating Staff the ability to establish the time period when Retirees can submit stop payments and a guarantee when the stop payments will be processed. The motion carried 7 yes (*Basgal, Gamble, Godfrey, Koppenhaver, Levy, Walker, Wood*), 0 no, and 1 abstention (*Carson*).**

Minutes of the meeting will be presented to the Board for adoption on the Consent Calendar at the September 16, 2021 Board meeting.

**NEW BUSINESS:**

***David Nelsen, Chief Executive Officer's Report***

Chief Executive Officer Dave Nelsen presented his August 19, 2021, written CEO Report which provided an update on: **1)** Committee and Board Action Items; **2)** Other Items, which included updates on: **a)** COVID-19 Responses; **b)** Pension Administration System Project; **c)** Board Election; **d)** Repeal of Governor's Emergency Orders; and **e)** Key Performance Indicators.

Mr. Nelsen reported the status of the re-opening of ACERA's Offices stating that very few members have taken advantage of the in-person appointments. Mr. Nelsen stated he may suspend the in-person appointments until further notice given the rise in COVID cases and the positive feedback received from members regarding ACERA's virtual appointments. Mr. Nelsen will keep the Board apprised of the status.

Mr. Nelsen reported the status of the Board Election for Seat 2 (General Member) stating that *Board Election Information Packets* will be available on ACERA's Website on August 30, 2021 and must be returned to ACERA by September 27, 2021. To ensure Staff and Members' safety due to the ongoing Pandemic, Mr. Nelsen requested that the Board allow the ACERA Elections Coordinator to accept copies of original (wet) endorsed signatures. After discussion, the Board agreed to allow the ACERA Elections Coordinator to accept several pages of the candidate's *Nomination Petition* with *copied* endorsed signatures in lieu of original (wet) endorsed signatures and that the copied endorsed signatures must be verified by ACERA Staff to ensure the signatures correspond to an active general member. Chief Counsel Jeff Rieger reminded the Board that per ACERA's *Board Elections Policy* (Page 3 Section VI.), the candidate's *original* (wet) signature must be affixed to the *Candidate's Application*.

Mr. Nelsen reported the status of the Retiree Return to Work issue stating that the Governor issued a new Order this week suspending the 180 day waiting period due to the rise in COVID cases. It was noted that the Order is very confusing. Updated information regarding direction from the Governor will be provided to the Participating Employers and will also be made available on ACERA's Website. Mr. Nelsen will also keep the Board apprised of the status.

Mr. Nelsen informed the Board that due to the rise in COVID cases, the Governor may extend the suspension of certain *Brown Act* requirements. Mr. Nelsen will keep the Board apprised of the status.

Mr. Nelsen reported the status of Assembly Bill 826 (Bill) that was recently introduced by SEIU in coordination with Ventura County that relates to reporting compensation that was deemed legally non-reportable as "compensation earnable." Mr. Nelsen reported that he and Eric Stern, who are Co-Chairs of the SACRS Legislative Counsel, prepared an Opposition Letter to the Legislature regarding this issue. However, per the SACRS Board, Messrs. Nelsen and Stern's Opposition Letter was not sent. It was noted that San Joaquin and Sonoma Counties also prepared and sent Opposition Letters to the Legislature. Mr. Nelsen will keep the Board apprised of the status.

Mr. Nelsen announced that ACERA's Fiscal Services Officer Margo Allen has accepted a Chief of Operations position at the Sacramento County Employees' Retirement System, which is closer to her Home. It was noted that Ms. Allen also performed some of the duties of the ACERA Assistant Chief Executive Officer of Operations. The Board and Staff expressed their appreciation and gratitude to Ms. Allen for all of her hard work and expressed she will be truly missed. Mr. Nelsen reported that he will recruit and fill the ACERA Assistant CEO of Operations position upon Ms. Allen's departure.



### **CONFERENCE/ORAL REPORTS**

It was noted that the Milken Conference is the most expensive, but is a valuable and very educational Conference. For that reason, Trustees who attend the Conference agreed to give the Board an oral report upon their return from the Conference. Mr. Rieger informed the Board that last year's Conference Sessions were made available on Milken's Website, free of charge. I was noted that this year's Conference Sessions may also be made available on Milken's Website, free of charge.

### **ANNOUNCEMENTS**

None.

### **BOARD INPUT**

None.

### **CLOSED SESSION**

- A. Conference With Legal Counsel--Existing Litigation (Gov't Code § 54956.9(d)(1)):

*Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Association*, Contra Costa County Superior Court, Case No. MSN12-1870.

The Board reconvened into Open Session and the following Trustees returned:  
***Basgal, Godfrey, Koppenhaver, Levy, Reilly and Wood***

Vice-Chair Godfrey stated the Board took no reportable action on the *ACDSA* matter.

### **ADJOURNMENT**

The meeting adjourned at approximately 3:56 p.m.

Respectfully Submitted,



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David Nelsen  
Chief Executive Officer

9/16/21

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Date Adopted

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**APPENDIX A**  
**APPLICATION FOR SERVICE RETIREMENT**

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ALVEY, Patricia  
Effective: 6/12/2021  
Sheriff's Department

GOECKI, Colleen  
Effective: 5/29/2021  
Superior Court

BACA, Jerald  
Effective: 5/1/2021  
Social Services Agency

GROVE, Renee  
Effective: 5/1/2021  
Superior Court

BARTHMAN, Philip  
Effective: 6/20/2021  
Public Works Agency

HERRERO, Mary  
Effective: 5/29/2021  
Assessor

BATES, John  
Effective: 1/23/2021  
Public Works Agency

JAMES, Josefa  
Effective: 5/29/2021  
District Attorney

BOYD-KIRKENDOLL, Sherilyn  
Effective: 6/1/2021  
Alameda Health System

LADUA, Zerlyn  
Effective: 5/29/2021  
Health Care Services Agency

BRENNAN, Eric  
Effective: 4/1/2021  
Zone 7

LEE, Clarence  
Effective: 1/27/2021  
Non-Member

BRUM, Joshua  
Effective: 5/7/2021  
Sheriff's Office

LIAS, Renee  
Effective: 6/1/2021  
County Counsel

COPELAND, Jody  
Effective: 5/1/2021  
Alameda Health System

LOFTON, Dalonna  
Effective: 11/13/2020  
Alameda Health System

DAVIS, Marlina  
Effective: 4/16/2021  
Probation Department

MERCADAL, Michael  
Effective: 5/29/2021  
Sheriff's Department

DOAN, Gina  
Effective: 4/12/2021  
Alameda Health System

MICHAELS, Gerald  
Effective: 5/13/2021  
Health Care Services Agency

DUNTON, Robert  
Effective: 6/12/2021  
General Services Agency

MINTER, Anita  
Effective: 5/1/2021  
Health Care Services Agency

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**APPENDIX A  
APPLICATION FOR SERVICE RETIREMENT**

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MURRELL, Darleen  
Effective: 5/15/2021  
Alameda Health System

RETTING-ZUCCHI, Ronald  
Effective: 6/26/2021  
Health Care Services Agency

ORTIZ, Martha  
Effective: 6/2/2021  
Social Services Agency

SEGUR, Darren  
Effective: 5/31/2021  
LARPD

OYATEDOR, Kent  
Effective: 6/21/2021  
Social Services Agency

TAFOYA, Dale  
Effective: 6/1/2021  
Probation Department

PATRICIO, Jack  
Effective: 5/29/2021  
Probation Department

TRIGALET, Lori  
Effective: 6/12/2021  
Health Care Services Agency

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**APPENDIX B  
APPLICATION FOR DEFERRED RETIREMENT**

---

ANDERSON, Nanci E.  
Superior Court  
Effective Date: 6/7/2021

BROWN, Tamia N.  
Social Services Agency  
Effective: 7/2/2021

ATKINS, Jeremy D.  
Health Care Services Agency  
Effective: 7/9/2021

CASTRO, Leonicia A.  
Health Care Services Agency  
Effective: 5/29/2021

BAGGEROER, Cheryl E.  
Health Care Services Agency  
Effective: 6/11/2021

CUMMINS, Jeremiah D.  
Sheriff's Office  
Effective: 2/19/2021

BALLOU, James M.  
Zone 7  
Effective: 5/20/2021

FIGUEROA, Michelle F. F.  
Probation Department  
Effective: 6/9/2021

BLACK, Teresa, A.  
Alameda Health System  
Effective: 6/1/2021

GORDON, Sheena A.  
Alameda Health System  
Effective: 6/9/2021

BOYD, Monty R.  
General Services Agency  
Effective: 7/9/2021

GRAY, Stephen W.  
Social Services Agency  
Effective: 6/30/2021

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**APPENDIX B**  
**APPLICATION FOR DEFERRED RETIREMENT**

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GUISE, Ngoc Oanh T.  
Superior Court  
Effective: 4/30/2021

NEFOUSE, Louis D.  
County Counsel  
Effective: 1/29/2021

HOLLAND, Elizabeth C.  
Alameda Health System  
Effective: 6/25/2021

OLIVAREZ, Alexandra S.  
Sheriff's Office  
Effective: 6/18/2021

HOLT, Laurina M.  
Sheriff's Office  
Effective: 7/9/2021

OWENS, Kenneth R.  
Probation Department  
Effective: 2/3/2021

HOPKINS, Willie A.  
General Services Agency  
Effective: 6/17/2021

PARKER, Dustin  
Sheriff's Office  
Effective: 7/2/2021

MACK, Leandrea R.  
Alameda Health System  
Effective Date: 1/29/2021

POULOSE, Rachel  
Alameda Health System  
Effective: 2/23/2021

MARTINEZ, Kristi L.  
Assessor  
Effective: 6/10/2021

QUIROZ, Amelia G.  
Social Services Agency  
Effective: 2/19/2021

MCDEVITT-PARKS, Randall K.  
Library  
Effective: 1/29/2021

RAMOS, Gabriela E.  
Health Care Services Agency  
Effective: 3/5/2021

MOORE, Britt D.  
Social Services Agency  
Effective: 5/17/2021

REDMOND, Anthony  
Alameda Health System  
Effective: 3/10/2021

MOORE, LYNDSEY L.  
County Counsel  
Effective: 6/11/2021

RUDA, Natalia G.  
Social Services Agency  
Effective: 4/23/2021

MORELOS, Alejandra  
Alameda Health System  
Effective: 5/20/2021

SANCHEZ, Mirtha T.  
Superior Court  
Effective Date: 6/30/2021

MUNOZ RAMOS, Cinthya J.  
Board of Supervisors  
Effective: 4/30/2021

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**APPENDIX B-1**  
**APPLICATION FOR NON-VESTED DEFERRED**

---

AJAELO, Nkiruka E.  
Social Services Agency  
Effective Date: 6/11/2021

CHAE, Andrew D.  
Library  
Effective: 6/30/2021

BALDOZ, Ellaline M.  
Alameda Health System  
Effective: 6/7/2021

CHEUNG, Keith  
Probation Department  
Effective: 7/8/2021

BALDWIN, Beth A.  
Public Works Agency  
Effective: 7/2/2021

DAMANI, Annalyn E.  
Health Care Services Agency  
Effective: 3/19/2021

BANDA, Alma  
Superior Court  
Effective: 4/30/2021

DEHNERT, Tamara L.  
Social Services Agency  
Effective: 5/12/2021

BASSILLY, Caroline N.  
Alameda Health System  
Effective: 3/25/2021

DOYLE, Alisa  
Alameda Health System  
Effective: 5/21/2021

BAYUTAS, Francis P.  
Sheriff's Office  
Effective: 7/8/2021

EAGLE, April O.  
Alameda Health System  
Effective Date: 6/21/2021

BECK, Matthew W.  
Alameda Health System  
Effective: 6/1/2021

EVANS, Dale E.  
Social Services Agency  
Effective: 5/7/2021

BOND, Wendy L.  
Social Services Agency  
Effective: 5/18/2021

FLORES, Ana I.  
County Counsel  
Effective: 3/12/2021

BOUTTE, Portia S.  
General Services Agency  
Effective: 7/2/2021

GALEANO, Xiomara L.  
Superior Court  
Effective: 4/30/2021

BRADFORD, Anthony M.  
Superior Court  
Effective: 7/2/2021

GONZALEZ, Isaac J.  
Superior Court  
Effective: 4/9/2021

BRESCIA-PENA, Ande R.  
Superior Court  
Effective: 7/2/2021

GRAY, Takiyah  
Social Services Agency  
Effective: 5/10/2021

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**APPENDIX B-1**  
**APPLICATION FOR NON-VESTED DEFERRED**

---

GREWAL, Suzanne  
Superior Court  
Effective: 6/25/2021

KWAN, Edric W. H.  
Public Works Agency  
Effective: 6/11/2021

HENNEN, Araina, L.  
Social Services Agency  
Effective: 1/28/2021

MADISON, Shauna R.  
Public Defender  
Effective: 5/4/2021

HERNANDEZ, Senjace  
Social Services Agency  
Effective: 6/11/2021

MAHLER, Alphonse R.  
General Services Agency  
Effective: 4/9/2021

HONG, Ju Young  
Health Care Services Agency  
Effective: 7/7/2021

MARTINEZ GARCIA, Diana L.  
Social Services Agency  
Effective: 2/19/2021

HSIEH, Kristina  
Health Care Services Agency  
Effective: 7/9/2021

MARTINS, Yi Z.  
Superior Court  
Effective: 4/30/2021

HSU, Thomas  
Zone 7  
Effective: 7/1/2021

MCELVEEN, Kristina L.  
Information Technology  
Effective: 4/13/2021

ILAG, Rowena S.  
Health Care Services Agency  
Effective: 2/19/2021

MERRITT, Brianna A.  
Alameda Health System  
Effective: 3/6/2021

ISAAC, Matthew  
District Attorney's Office  
Effective: 6/18/2021

METTERS, James R.  
Human Resources  
Effective: 3/22/2021

JENNINGS, Kim  
Superior Court  
Effective: 4/9/2021

MORRISON, Virginia L.  
Information Technology  
Effective: 5/26/2021

KIM, Hyun J.  
Social Services Agency  
Effective: 6/28/2021

MOTLEY, Breaunna C.  
Social Services Agency  
Effective: 2/19/2021

KREEFT, Anna R.  
Alameda Health System  
Effective Date: 5/12/2021

NEWMAN, Abby N.  
Sheriff's Office  
Effective: 6/11/2021

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**APPENDIX B-1**  
**APPLICATION FOR NON-VESTED DEFERRED**

---

NGUYEN, Vivian L.  
Alameda Health System  
Effective: 6/18/2021

RAAD, Zyde  
Health Care Services Agency  
Effective: 5/14/2021

PAIGE, Lesley J.  
Health Care Services Agency  
Effective: 2/26/2021

RAJAN, Ranjeet  
Alameda Health System  
Effective: 5/21/2021

PASION, Caroline P.  
Superior Court  
Effective: 5/21/2021

RAMOS, Patsy J.  
Alameda Healthy System  
Effective: 4/18/2021

PEARL, Anna R.  
Alameda Health System  
Effective: 3/18/2021

RAMSEY, Lajuan M.  
Community Development Agency  
Effective: 6/25/2021

PELINGON, Venus C.  
Alameda Health System  
Effective Date: 2/26/2021

RANSOM, Shaunetta M.  
Alameda Health System  
Effective: 1/28/2021

PEREIRA, Jordan V.  
Sheriff's Office  
Effective: 3/22/2021

REDING, Laura  
Superior Court  
Effective: 4/9/2021

PEREZ, Genesis A.  
Social Services Agency  
Effective: 6/25/2021

RONQUILLO LASTRA, Sylvia A.  
Sheriff's Office  
Effective: 7/3/2021

PERRON, Stephanie M.  
Social Services Agency  
Effective: 3/5/2021

ROOS, Chelsey M.  
Library  
Effective: 5/26/2021

PIPER, CheRonn  
Superior Court  
Effective: 1/22/2021

ROSALES-VILLANUEVA, Miguel A.  
Social Services Agency  
Effective: 6/14/2021

PURNELL, Broderick J.  
Health Care Services Agency  
Effective: 6/11/2021

ROSSETTI, Maria A.  
Assessor  
Effective Date: 6/29/2021

QUINTANILLA, Alex B.  
Health Care Services Agency  
Effective: 5/7/2021

SALMON, Carolyn A.  
Superior Court  
Effective: 6/29/2021

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**APPENDIX B-1  
APPLICATION FOR NON-VESTED DEFERRED**

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SANDHU, Anureet K.  
Health Care Services Agency  
Effective: 5/12/2021

STARK, Anna R.  
Alameda Health System  
Effective: 5/28/2021

SIMPSON, Nichelle M.  
Human Resource Services  
Effective: 7/9/2021

WOO, Mary M.  
Human Resource Services  
Effective: 7/9/2021

YOUNG, Yvonne  
Health Care Services Agency  
Effective: 5/28/2021

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**APPENDIX D  
LIST OF DECEASED MEMBERS**

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AGDAMAG, Salome  
Sheriff's Office  
6/11/2021

GREEN, Janice  
Social Services Agency  
7/3/2021

BUTTS, Lila  
Alameda Health System  
6/11/2021

HSU, Grace  
Social Services Agency  
5/1/2021

CARUTHERS, James  
Assessor  
7/2/2021

JONES, Margaret  
Assessor  
6/23/2021

COLEMAN, David  
Superior Court  
6/20/2021

KELDGORD, Robert  
Probation Department  
7/10/2021

DANIELSON, Laurence  
General Services Agency  
6/25/2021

KOCI, Helen  
Social Services Agency  
7/13/2021

DUNCAN, Donald  
Probation Department  
6/10/2021

KUMLER, Sherrill  
Library  
6/2/2021

EDWARDS, Phyllis  
Public Defender  
7/1/2021

GORDON, Joseph  
Social Services Agency  
7/4/2021



LARSEN, Lawrence  
General Services Agency  
6/25/2021

MAAS, Wayne  
Sheriff's Office  
6/16/2021

ORELLANA, Leandro  
Health Care Services Agency  
3/23/2021

PORTILLO, Jose  
Non-Mbr Survivor of Helen Portillo  
7/1/2021

SPEAR, Joseph  
Sheriff's Office  
7/25/2021

**APPENDIX E**  
**REQUEST FOR 130 BI-WEEKLY PAYMENTS TO**  
**RE-DEPOSIT CONTRIBUTIONS AND GAIN CREDIT**

**Name:** Delbridge, Lance  
**Type of Claim:** Service-Connected

Adopt the findings and conclusions and approve and adopt the recommendation contained in the Medical Advisor's report, including but not limited to, granting Mr. Delbridges's application for a service-connected disability, and waiving future annual medical examinations and questionnaires at this time.

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## APPENDIX F

### APPLICATION FOR DISABILITY RETIREMENT

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**Name:** DeSousa, Lorena  
**Type of Claim:** Service-Connected

Staff's Recommendation:

Adopt the findings and conclusions and approve and adopt the recommendation contained in the Medical Advisor's report, including but not limited to, granting Ms. DeSousa's application for a service-connected disability, and waiving future annual medical examinations and questionnaires at this time.

\*REDACTED SECTION\*

**Name:** Garner, Jean  
**Type of Claim:** Service-Connected

Staff's Recommendation:

Adopt the findings and conclusions and approve and adopt the recommendation contained in the Medical Advisor's report, including but not limited to, granting Ms. Garner's application for a service-connected disability, and waiving future annual medical examinations and questionnaires.

\*REDACTED SECTION\*

**Name:** Giles, Nathaniel  
**Type of Claim:** Service-Connected

Staff's Recommendation:

Adopt the findings and conclusions and approve and adopt the recommendation contained in the Medical Advisor's report, including but not limited to, granting Mr. Gile's application for a service-connected disability, and waiving future annual medical examinations and questionnaires.

\*REDACTED SECTION\*

**Name:** Guffey, Kenneth  
**Type of Claim:** Service-Connected

Staff's Recommendation:

Adopt the findings and conclusions and approve and adopt the recommendation contained in the Medical Advisor's report, including but not limited to, granting Mr. Guffey's application for a service-connected disability, and waiving future annual medical examinations and questionnaires.

\*REDACTED SECTION\*

**Name:** Stephens, Una  
**Type of Claim:** Service-Connected

Adopt the findings and conclusions and approve and adopt the recommendation contained in the Medical Advisor's report, including but not limited to, granting Ms. Stephens's application for a service-connected disability, and waiving future annual medical examinations and questionnaires.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011 1012 1013 1014 1015 1016 1017 1018 1019 1020 1021 1022 1023 1024 1025 1026 1027 1028 1029 1030 1031 1032 1033 1034 1035 1036 1037 1038 1039 1040 1

**September 1, 2021  
Retirees Committee Minutes  
For approval under September 16, 2021  
Board “Consent Calendar”**

**The September 1, 2021 Retirees Committee  
Minutes will be distributed  
under separate cover**

**September 8, 2021  
Investment Committee Minutes  
For approval under September 16, 2021  
Board “Consent Calendar”**

**The September 8, 2021 Investment  
Committee Minutes will be distributed  
under separate cover**

**August 19, 2021**  
**Governance Committee Minutes**  
**For approval under September 16, 2021**  
**Board “Consent Calendar”**



**MINUTES OF THE AUGUST 19, 2021 GOVERNANCE COMMITTEE MEETING**  
**THIS MEETING WAS CONDUCTED VIA TELECONFERENCE WITH VIDEO**

**To:** Members of the Board of Retirement  
**From:** Ophelia Basgal, Governance Committee Chair  
**Date:** August 19, 2021  
**Subject:** **Summary of the August 19, 2021, Governance Committee Meeting**

Governance Committee Chair, Ophelia Basgal, called the meeting to order at 11:00 a.m. Committee Members present were Ophelia Basgal, Jaime Godfrey, Liz Koppenhaver, and Henry Levy. Committee Member George Wood was absent (excused). Other Board members present were Tarrell Gamble, Darryl Walker and Nancy Reilly. Senior staff present were Angela Bradford, Executive Secretary; Sandra Dueñas-Cuevas, Benefits Manager; Kathy Foster, Assistant Chief Executive Officer; Harsh Jadhav, Chief of Internal Audit; Vijay Jagar, Chief Technology Officer; David H. Nelsen, Chief Executive Officer; Jeff Rieger, Chief Counsel; and Betty Tse, Chief Investment Officer.

**ACTION ITEMS**

**1. Review of the *Securities Litigation Policy*.**

Chief Counsel Jeff Rieger presented the *Securities Litigation Policy*, spoke about the policy (for which no revisions were recommended) and answered questions from the trustees.

A motion was moved by Trustee Levy and seconded by Trustee Godfrey that the Governance Committee recommend to the Board that the *Securities Litigation Policy* continues to be necessary and appropriate and that the Board affirm the *Securities Litigation Policy* without revisions. The motion was approved by a vote of 7 in favor (Basgal, Gamble, Godfrey, Koppenhaver, Levy, Reilly, Walker), 0 against, 0 abstaining.

**2. Review of the *Record Retention Policy*.**

Chief Counsel Jeff Rieger presented the *Record Retention Policy* and explained that only minor non-substantive revisions were recommended.

A motion was moved by Trustee Levy and seconded by Trustee Koppenhaver that the Governance Committee recommend to the Board that the *Record Retention Policy* continues to be necessary and appropriate and that the Board make the revisions to the *Record Retention Policy* shown in the redline included with the agenda packet. The motion was approved by a vote of 6 in favor (Basgal, Gamble, Godfrey, Koppenhaver, Levy, Reilly), 0 against, 1 abstaining (Walker).

**3. Review of the *Outside Counsel Policy*.**

Chief Counsel Jeff Rieger presented the *Outside Counsel Policy*, spoke about the recommended revisions and answered questions from the trustees. Mr. Rieger also explained

that one paragraph (see motion below) was inadvertently stricken in the redline included in the agenda packet, so he recommended that the Board retain that paragraph in the Policy.

A motion was moved by Trustee Levy and seconded by Trustee Godfrey that the Governance Committee recommend to the Board that the *Outside Counsel Policy* continues to be necessary and appropriate and that the Board make the revisions to the *Outside Counsel Policy* shown in the redline included with the agenda packet, but retain the paragraph “The Chief Executive Officer and the Chief Counsel may also retain other providers of legal services including investigators, arbitrators, mediators and fact finders as they deem necessary to protect and advance ACERA’s interests,” as the second paragraph under Section III(B) of the Policy. The motion was approved by a vote of 7 in favor (Basgal, Gamble, Godfrey, Koppenhaver, Levy, Reilly, Walker), 0 against, 0 abstaining.

#### **4. Review of the *Retiree Payroll Deduction Policy*.**

Chief Counsel Jeff Rieger presented the *Retiree Payroll Deduction Policy*, spoke about the recommended revisions and answered questions from the trustees. Chair Basgal suggested that Section III(D) should include more information about the normal expected time for staff to stop making payroll deductions after receiving a request to stop deductions. The Board received input from staff on that subject.

A motion was moved by Trustee Godfrey and seconded by Trustee Koppenhaver that the Governance Committee recommend to the Board that the *Retiree Payroll Deduction Policy* continues to be necessary and appropriate and that the Board make the revisions to the *Retiree Payroll Deduction Policy* shown in the redline included with the agenda packet, and delegate to staff authority to add additional language to Section III(D) of the Policy to state that previously authorized deductions should normally stop by the second month-end payroll after ACERA receives an approvable request to stop deductions. The motion was approved by a vote of 7 in favor (Basgal, Gamble, Godfrey, Koppenhaver, Levy, Reilly, Walker), 0 against, 0 abstaining.

### **INFORMATION ITEMS**

- None

### **TRUSTEE / PUBLIC INPUT**

- Trustee Walker asked about whether, in light of COVID, there were any concerns about trustees attending the Board of Retirement meeting later that day in person and CEO Dave Nelsen responded that trustees were welcome to attend in person.

### **ESTABLISHMENT OF NEXT MEETING DATE**

- TBD

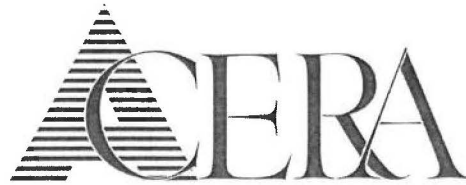
### **ADJOURNMENT**

- The meeting adjourned at 11:56 a.m.



**CONSENT CALENDAR ITEM**

**Operating Expenses as of July 31, 2021  
For review under September 16, 2021  
Board “Consent Calendar”**



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MEMORANDUM TO THE BOARD OF RETIREMENT

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DATE: September 16, 2021

TO: Members of the Board of Retirement

FROM: Margo Allen, Fiscal Services Officer 

SUBJECT: Operating Expenses and Budget Summary for the period ended July 31, 2021

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ACERA's operating expenses are \$1,427K under budget for the period ended July 31, 2021. Budget surpluses and overages worth noting are as follows:

**Budget Surpluses**

1. *Staffing*: Staffing is \$810K under budget. This amount comprises surplus in staff vacancies of (\$269K) and fringe benefits of (\$624K), offset by an overage in temporary staffing of \$83K due to vacant positions filled by temporary staff.
2. *Staff Development*: Staff Development is \$74K under budget due to savings from unattended staff trainings and conferences.
3. *Professional Fees*: Professional Fees are \$50K under budget. This amount comprises surplus in legal fees of (\$34K), benefit consultant fees of (\$1K), and actuarial fees of (\$15K) due to savings from last year's accrual.
4. *Office Expense*: Office Expense is \$81K under budget. This amount comprises surpluses in printing and postage of (\$10K) and office maintenance and supplies of (\$28K) both due to savings in usage, communication expenses of (\$4K), building expenses of (\$2K), amortization expense of (\$1K), bank charges and miscellaneous administration of (\$13K) mainly due to savings from investment committee meeting security and active for life expenses, equipment lease and maintenance of (\$13K) mainly due to savings from overall equipment maintenance, and minor equipment and furniture of (\$10K) due to savings from ergonomic equipment and furniture expenses.
5. *Insurance*: Insurance is \$9K under budget.
6. *Member Services*: Member Services are \$32K under budget. This amount comprises surpluses in disability legal arbitration and transcripts of (\$35K) due to reduction in number of disability cases than expected, members' printing and postage of (\$13K), and member training and education of (\$3K), offset by overages in virtual call center of \$14K, and disability medical expense of \$5K.
7. *Systems*: Systems are \$98K under budget. This amount comprises surpluses in software maintenance and support of (\$107K) mainly due to delay in IT projects and savings from last year's accrual, business continuity of (\$1K), offset by overages minor computer hardware of \$7K, and county data processing of \$3K.

## Operating Expenses Budget Summary for the period ended July 31, 2021

8. *Depreciation:* Depreciation is \$1K under budget.
9. *Board of Retirement:* Board of Retirement is \$272K under budget. This amount comprises surpluses in board conferences and trainings of (\$147K) due to timing difference and unattended trainings and conferences, board compensation of (\$1K), board employer reimbursement of (\$114K) due to adjustment of previous year's overpayments, and board miscellaneous expenses of (\$10K).

**Staffing Detail**

Permanent vacant positions as of July 31, 2021:

Department	Position	QTY	Comments
Administration	Administrative Assistant	1	Vacant - currently budgeted until 12/2021
Benefits	Administrative Specialist II	1	Vacant - currently budgeted until 12/2021
Benefits	Senior Retirement Technician	1	Vacant - currently budgeted until 12/2021
Investments	Investment Operation Officer	1	Vacant - currently budgeted until 12/2021
Investments	Investment Analyst	1	Vacant - currently budgeted until 12/2021
<b>Total Positions</b>		<b>5</b>	

<b>Pension Administration System Project - as of 7/31/2021</b>					
All amounts are in \$	Year-To-Date				
	Actual	Budget	Variance	2021 Budget	2019-20 Actual
<b>Consultant Fees</b>					
Levi, Ray and Shoup	28,337	399,000	(370,663)	683,000	1,085,179
Segal	208,598	224,000	(15,403)	384,000	800,450
Other expenses	-	29,400	(29,400)	50,000	1,500
Leap Technologies	-	-	-	-	98,970
Total	236,935	652,400	(415,465)	1,117,000	1,986,099
<b>Staffing</b>	348,048	354,750	(6,702)	627,000	881,052
<b>TOTAL</b>	<b>584,983</b>	<b>1,007,150</b>	<b>(422,167)</b>	<b>1,744,000</b>	<b>2,867,151</b>

Attachments:

- Total Operating Expenses Summary
- Professional Fees – Year-to-Date – Actual vs. Budget



ALAMEDA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

TOTAL OPERATING EXPENSES SUMMARY

YEAR TO DATE - ACTUAL VS. BUDGET					
<u>July 31, 2021</u>					
	Actual	Budget	YTD	2021	% Actual to
	<u>Year-To-Date</u>	<u>Year-To-Date</u>	<u>Variance</u>	<u>Annual</u>	<u>Annual Budget</u>
			<u>(Under)/Over</u>	<u>Budget</u>	
Staffing	\$ 8,513,714	\$ 9,324,000	\$ (810,286)	\$ 16,049,000	53.0%
Staff Development	84,380	158,680	(74,300)	274,000	30.8%
Professional Fees (Next Page)	749,798	799,220	(49,422)	1,178,000	63.7%
Office Expense	255,092	336,000	(80,908)	574,000	44.4%
Insurance	457,792	467,000	(9,208)	825,000	55.5%
Member Services	209,106	241,100	(31,994)	464,000	45.1%
Systems	626,143	724,520	(98,377)	1,202,000	52.1%
Depreciation	68,464	69,640	(1,176)	118,000	58.0%
Board of Retirement	134,029	405,570	(271,541)	675,000	19.9%
Uncollectable Benefit Payments	-	-	-	68,000	0.0%
Total Operating Expense	\$ 11,098,518	\$ 12,525,730	\$ (1,427,212)	\$ 21,427,000	51.8%



ALAMEDA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION  
PROFESSIONAL FEES

YEAR TO DATE - ACTUAL VS. BUDGET

July 31, 2021

	<u>Actual</u> <u>Year-To-Date</u>	<u>Budget</u> <u>Year-To-Date</u>	<u>YTD Variance</u> <u>(Under)/Over</u>	<u>2021</u> <u>Annual</u> <u>Budget</u>	<u>% Actual to</u> <u>Annual Budget</u>
<b><u>Professional Fees</u></b>					
Consultant Fees - Operations and Projects <sup>1</sup>	\$ 193,401	\$ 194,110	\$ (709)	\$ 333,000	58.1%
Actuarial Fees <sup>2</sup>	288,906	303,810	(14,904)	415,000	69.6%
External Audit <sup>3</sup>	157,000	157,000	-	157,000	100.0%
Legal Fees <sup>4</sup>	110,491	144,300	(33,809)	273,000	40.5%
<b>Total Professional Fees</b>	<b>\$ 749,798</b>	<b>\$ 799,220</b>	<b>\$ (49,422)</b>	<b>\$ 1,178,000</b>	<b>63.7%</b>

	<u>Actual</u> <u>Year-To-Date</u>	<u>Budget</u> <u>Year-To-Date</u>	<u>YTD Variance</u> <u>(Under)/Over</u>	<u>2019 Annual</u> <u>Budget</u>	<u>% Actual to</u> <u>Annual Budget</u>
<b><u><sup>1</sup> CONSULTANT FEES - OPERATIONS AND PROJECTS:</u></b>					
Benefits					
Alameda County HRS (Benefit Services)	73,500	73,500	-	126,000	58.3%
Segal (Benefit Consultant/Retiree Open Enrollment)	74,200	75,810	(1,610)	130,000	57.1%
Total Benefits	147,700	149,310	(1,610)	256,000	57.7%
Human Resources					
Lakeside Group (County Personnel)	45,701	44,800	901	77,000	59.4%
Total Human Resources	45,701	44,800	901	77,000	59.4%
<b>Total Consultant Fees - Operations</b>	<b>\$ 193,401</b>	<b>\$ 194,110</b>	<b>\$ (709)</b>	<b>\$ 333,000</b>	<b>58.1%</b>
<b><u><sup>2</sup> ACTUARIAL FEES</u></b>					
Actuarial valuation	79,000	79,000	-	79,000	100.0%
GASB 67 & 68 Valuation	20,000	24,500	(4,500)	49,000	40.8%
GASB 74 & 75 Actuarial	7,500	7,500	-	15,000	50.0%
Actuarial Standard of Practice 51 Pension Risk	40,000	40,000	-	40,000	100.0%
Supplemental Consulting	100,406	110,810	(10,404)	190,000	52.8%
Supplemental Retiree Benefit Reserve valuation	42,000	42,000	-	42,000	100.0%
<b>Total Actuarial Fees</b>	<b>\$ 288,906</b>	<b>\$ 303,810</b>	<b>\$ (14,904)</b>	<b>\$ 415,000</b>	<b>69.6%</b>
<b><u><sup>3</sup> EXTERNAL AUDIT</u></b>					
External audit	132,000	132,000	-	132,000	100.0%
GASB 67 & 68	13,000	13,000	-	13,000	100.0%
GASB 74 & 75-External Audit	12,000	12,000	-	12,000	100.0%
<b>Total External Audit Fees</b>	<b>\$ 157,000</b>	<b>\$ 157,000</b>	<b>\$ -</b>	<b>\$ 157,000</b>	<b>100.0%</b>
<b><u><sup>4</sup> LEGAL FEES</u></b>					
<u>Fiduciary Counseling &amp; Litigation</u>					
Nossaman - Fiduciary Counseling	11,304	9,983	1,321	21,750	
Reed Smith - Fiduciary Counseling	5,905	3,883	2,021	11,650	
Nossaman - Litigation	12,759	15,083	(2,324)	24,500	
Reed Smith - Litigation	61,529	58,750	2,779	118,100	
Subtotal	91,497	87,700	3,797	176,000	52.0%
<u>Tax and Benefit Issues</u>					
Hanson Bridgett	11,001	16,900	(5,899)	29,000	
Subtotal	11,001	16,900	(5,899)	29,000	37.9%
<u>Miscellaneous Legal Advice</u>					
Meyers Nave	7,993	39,700	(31,707)	68,000	
Subtotal	7,993	39,700	(31,707)	68,000	11.8%
<b>Total Legal Fees</b>	<b>\$ 110,491</b>	<b>\$ 144,300</b>	<b>\$ (33,809)</b>	<b>\$ 273,000</b>	<b>40.5%</b>

## **CONSENT CALENDAR ITEM**

1. **Approve Staff Recommendation regarding County of Alameda's Amendment to Oversight Facilities Management/Staff Development – 42C**



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MEMORANDUM TO THE BOARD OF RETIREMENT

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DATE: September 16, 2021

TO: Members of the Board of Retirement

FROM: Sandra Dueñas-Cuevas, Benefits Manager 

SUBJECT: **Approval of Amended Pay Item/Code as “Compensation Earnable” and “Pensionable Compensation” – County of Alameda**

The County of Alameda (County) requested that the amended pay item/code Oversight Facilities Management/Staff Development – 42C be reviewed to determine whether it qualifies as “compensation earnable” and “pensionable compensation”. ACERA currently includes this pay item as “compensation earnable” under Government Code Section 31461 (for Legacy members), and excludes it from “pensionable compensation” under Government Code Section 7522.34 (for PEPRAs members). This pay item/code is excluded from “pensionable compensation” because it applies to one position in Job Code 0465SM, Chief Departmental Human Resources Officer in the Alameda County Social Services Agency (SSA).

There are two main changes amending this pay item/code effective July 11, 2021. The first change is that one additional position in Job Code 0465SM, Chief Departmental Human Resources Officer in the Alameda County Health Care Services Agency (HCSA) is added, increasing the total number of eligible positions to two in the same group or class of employment. Due to the additional position, the pay item name is changed to Oversight Staff Development SSA-HCSA. The second change is that the footnote provision for additional compensation is reduced from 10% to 8% of the employee’s base pay.

Staff and Chief Counsel reviewed the required supporting documentation (attached) and made the determination that the amended pay item/code now qualifies as “pensionable compensation” (for PEPRAs members) since it applies to more than one similarly situated employee in the same group or class of employment, and it does not fall under any of the express exclusions for “pensionable compensation”. Under the Board of Retirement’s (Board) historical practices, these kinds of pay items/codes have been included in both “compensation earnable” and “pensionable compensation”. The two relevant Government Code sections are attached for the Board’s reference.

Staff informed the County that its determination will be included on the Board’s consent calendar for approval at its September 16, 2021 meeting. If this item is not pulled from the consent calendar for discussion, then the Board will approve Staff’s determination that the amended pay item/code is “compensation earnable” under Government Code Section 31461 (for Legacy members) and “pensionable compensation” under Government Code Section 7522.34 (for PEPRAs members).

Attachments



**ALAMEDA COUNTY**  
**AUDITOR-CONTROLLER AGENCY**  
**MELISSA WILK**  
AUDITOR-CONTROLLER/CLERK-RECORDER

**REQUEST FOR ACERA'S REVIEW OF A NEW PAY ITEM/CODE**

Employer Name:	County of Alameda
Date of Request	7/14/2021
Employer Department Submitting the Request	Auditor-Controller's Agency
Contact Person/Employer (include title/position)	Satjit Dale
Contact Person Telephone incl area code	(510) 272-6520
Contact Person Email address	satjit.dale@acgov.org
<b>Pay Item Name (and code Number)</b>	<b>42C Ovsight Staff Dev SSA-HCSA</b>
Pay Item Effective Date per authorization:	7/11/2021
State if additional documentation is attached	Yes – Board Letter

**NOTE:** The following information is required before ACERA can review and respond to the request. To meet ACERA's requirements, please provide substantive responses below or on a separate paper and return, with this form, all of the supporting documentation prior to issuing (paying) the pay item to any employee who is an ACERA member.

1. State the job classification of employees eligible for the pay item (i.e. Job Code 0499-Nurse Practitioners II may receive this pay item)

**RESPONSE #1: Job Code 0465SM Chief Departmental Human Resources Administrator**

2. State employment status of employees eligible to receive the pay item (i.e. full time employees, part time employees)

**RESPONSE #2: Full Time**

3. State the number of members or employees who are eligible to receive the pay item (i.e. all members or employees in a job classification eligible to receive the pay item, or "not to exceed one employee")

**RESPONSE #3: Not to exceed 1 employee in each of the Alameda County Social Services Agency and Health Care Services Agency**

4. State whether pay item is for overtime or regular base pay

**RESPONSE #4: Regular base pay**

5. State whether pay item is calculated as a fixed amount or percentage of the base pay

**RESPONSE #5: Percentage, paid up to an additional 8% of base pay**

6. State whether the pay item is paid one time (i.e. incentive pay, referral pay, bonus, award)

**RESPONSE #6: No**

Office of the Auditor-Controller  
1221 Oak St., Suite 249  
Oakland, CA 94612  
Tel: (510) 272-6565  
Fax: (510) 272-6502

Central Collections Division  
1221 Oak St., Suite 220  
Oakland, CA 94612  
Tel: (510) 208-9900  
Fax: (510) 208-9932

Clerk-Recorder's Office, Main  
1106 Madison St., 1<sup>st</sup> Floor  
Oakland, CA 94607  
Tel: (510) 272-6362  
Fax: (510) 208-9858

Clerk-Recorder's Office, Tri-Valley  
7600 Dublin Blvd.  
Dublin, CA 94568  
Tel: (510) 272-6362  
Fax: (510) 208-9858





**ALAMEDA COUNTY**  
**AUDITOR-CONTROLLER AGENCY**  
**MELISSA WILK**  
AUDITOR-CONTROLLER/CLERK-RECORDER

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7. State whether the pay item is an ad hoc payment (i.e., stipend, payment for attending a meeting during the working hours, payment for attending a meeting during non-working hours)

**RESPONSE #7: No**

8. State whether the pay item is a reimbursement (i.e., car allowance, housing allowance, uniform allowance, mileage payment, cell phone allowance)

**RESPONSE #8: No**

9. State regular working hours of the employees who will receive the pay item (i.e., 37.5 hour workweek employees, 40 hour workweek employees)

**RESPONSE #9: 40.0 hour workweek**

10. State whether pay item is for work performed outside of the regular workweek (i.e., payment for work or services performed outside of the employee's 37.5 hour workweek, or outside the employee's 40 hour workweek)

**RESPONSE #10: No**

11. State whether the pay item is for deferred compensation

**RESPONSE #11: No**

12. State whether the pay item is for retro payments

**RESPONSE #12: No**

13. State whether the pay item is for accrued unused leaves (i.e., sick leave, annual leave, floating holiday, vacation, comp time)

**RESPONSE #13: No**

14. State whether the payment is compensation that had previously been provided in kind to the member by the employer or paid directly by the employer to a third party other than the retirement system for the benefit of the member or employee

**RESPONSE #14: No**

15. State whether the payment is severance or other payment in connection with or in anticipation of a separation from employment (and state if this payment is made while employee is working)



**ALAMEDA COUNTY**  
**AUDITOR-CONTROLLER AGENCY**  
**MELISSA WILK**  
AUDITOR-CONTROLLER/CLERK-RECORDER

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**RESPONSE #15: No**

16. State whether the pay item is paid in one lump sum or biweekly (or over some other time period-monthly, quarterly, annually)

**RESPONSE #16: Biweekly**

17. State the basis for eligibility for the pay item (i.e., certification of completion of training program conducted by an accredited university, or employee assigned as supervisor of badge distribution)

**RESPONSE #17: Per Salary Ordinance Section 3-21.104**

3-21-104 – Effective July 11, 2021, not to exceed one (1) employee in Job Code 0465SM, Chief Departmental Human Resources Administrator, in each of the Alameda County Social Services Agency ("SSA") and Health Care Services Agency ("HCSA"), when assigned, in addition to their regular assignment, oversight of staff development that includes departmental technical training with a training staff of over 50 employees or Emergency Medical Services Corps and Alameda County Healthcare Pipeline programs, in SSA or HCSA, respectively, shall receive up to an additional eight percent (8%) compensation of the base pay. This footnote shall no longer apply when either employee is no longer assigned the additional oversight of the aforementioned areas. This footnote will be subject to a review by the Director of Human Resource Services on or before July 10, 2023.

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**Office of the Auditor-Controller**  
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**Clerk-Recorder's Office, Main**  
1106 Madison St., 1<sup>st</sup> Floor  
Oakland, CA 94607  
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Fax: (510) 208-9858

**Clerk-Recorder's Office, Tri-Valley**  
7600 Dublin Blvd.  
Dublin, CA 94568  
Tel: (510) 272-6362  
Fax: (510) 208-9858

## SECOND READING - CONTINUED FROM 06/08/2021



AGENDA NO. 40 June 8, 2021

Lakeside Plaza Building  
1401 Lakeside Drive, Suite 200  
Oakland, CA 94612-4305  
TDD: (510) 272-3703

### Human Resource Services

*2nd reading 6/15/21*

June 8, 2021

Honorable Board of Supervisors  
County of Alameda  
1221 Oak Street, Suite 536  
Oakland, California 94612-4305

SUBJECT: ADOPT SALARY ORDINANCE AMENDMENTS TO: 1) INCREASE SALARIES FOR 13 UNREPRESENTED NON-MANAGEMENT CLASSIFICATIONS RELATED TO SEIU, LOCAL 1021 AND ONE (1) CLASSIFICATION REPRESENTED BY SEIU, LOCAL 1021; AND 2) AMEND SUBSECTION 3-18.43 AND MOVE TO NEW SUBSECTION 3-21.104

Dear Board Members:

#### **RECOMMENDATIONS:**

Adopt Salary Ordinance amendments to:

- A. Increase the salaries for: i) 13 Unrepresented Non-Management classifications related to the Northern California Public Sector Region Local 1021 of the Service Employees International Union ("SEIU, Local 1021") classifications; and ii) one (1) classification in the Health Care Services Agency ("HCSA") represented by SEIU, Local 1021, due to an administrative error, effective June 27, 2021; and
- B. Amend Article 3, Section 3-18 (Social Services Agency), subsection 3-18.43 to include one (1) additional employee in the classification of Chief Departmental Human Resources Administrator ("Chief DHRA"), Job Code ("JC") #0465SM, located in HCSA and adjust the additional compensation from ten percent (10%) to eight percent (8%), effective July 11, 2021, and move said footnote to Article 3, Section 3-21 (Miscellaneous), new subsection 3-21.104.

#### **DISCUSSION/SUMMARY:**

Staff recommends that the following 13 Unrepresented Non-Management job classifications related to SEIU, Local 1021 receive a salary increase of three and one-quarter percent (3.25%) effective June 27, 2021, similar to the salary increase received by SEIU, Local 1021, as provided in the 2015 – 2022 Memorandum of Understanding ("MOU"): 1) Training Center Customer Service Representative, JC #0480NM; 2) Pedestrian Crossing Guard SAN (JC #1107N); 3) Ancillary Support Worker, Health Care Services Agency, (JC #5021NM); 4) Psychiatric Mental Health Nurse Practitioner (JC #5384NM); 5) Special Assistant to Volunteer Program Coordinator (JC #6181NM); 6) Court Appointed Special Advocates ("CASA") Volunteer Program Assistant (JC #6186NM); 7) Medical Social Worker II SAN (JC #6415N); 8) Marriage and Family Therapist II (JC #6497N); 9) Behavioral Clinician II SAN (JC #6510N); 10) Regional Training Center Instructor SAN (JC #8549N); 11) Regional Training Center Instructor EVOC (Emergency Vehicle Operations) SAN (JC #8550N); 12) Regional Training Center Lead Instructor SAN (JC #8551N); and 13) Sheriff's Service Cadet SAN (Services As Needed) (JC #8751N).

Further, due to an administrative error, we recommend increasing the salary for one (1) classification of Senior Therapist (JC #5865NM), in HCSA, represented by SEIU, Local 1021. In 2019, the SEIU, Local 1021 MOU was extended for three (3) years through December 31, 2022. As part of the SEIU, Local 1021 MOU extension, there were several special salary

adjustments that were granted to various classifications, including a one and one-tenth percent (1.1%) special adjustment for the Senior Therapist (JC #5865NM) classification effective June 27, 2021. The 2015 – 2022 SEIU, Local 1021 MOU includes for said classification to receive the one and one-tenth percent (1.1%) special adjustment, however, the salary rates as outlined in the SEIU, Local 1021 MOU Appendix A reflects the salary rates of a one percent (1%) special adjustment effective June 27, 2021. As such, staff recommends correcting the SEIU, Local 1021 MOU salary rates for the Senior Therapist classification (JC #5865NM) to reflect the correct calculation of the salary rate, inclusive of the three and one-quarter percent (3.25%) negotiated salary increase and the one and one-tenth (1.1%) salary adjustment.

Finally, we recommend amending subsection 3-18.43 to include one (1) additional employee in the classification of Chief DHRA (JC #0465SM) in HCSA to be eligible for said footnote. HCSA's Chief DHRA currently has oversight of the Emergency Medical Services Corps program, which is a 5-month paid (stipend) program where participants receive Emergency Medical Technician training, as well as the Alameda County Healthcare Pipeline program which is a consortium of 15 health-related internship programs housed within HCSA. Based on the added programmatic duties of HCSA's Chief DHRA, which are similar to the program oversight as performed by Chief DHRA in the County Social Services Agency, we recommend expanding the current subsection 3-18.43 to include an additional employee in the classification of Chief DHRA in HCSA and moving said footnote to a new subsection of 3-21.104 of the Salary Ordinance, effective July 11, 2021. This footnote shall no longer apply when either employee in SSA or HCSA is no longer assigned the additional oversight of the aforementioned areas, and will be subject to a review by the Director of Human Resource Services on or before July 10, 2023.

**FINANCING:**

Funds are available in the 2021-2022 Approved Budget and will be included in future years' requested budgets to cover the costs resulting from these actions.

**VISION 2026 GOAL:**

The Salary Ordinance amendments meet the 10x goal pathways of **Employment for All** in support of our shared vision of a **Prosperous and Vibrant Economy**.

Very truly yours,

DocuSigned by:  
  
2C0D22F824DA404  
Joe Angelo, Director  
Human Resource Services

c: CAO  
Auditor-Controller  
County Counsel  
Agency/Department Heads



1<sup>st</sup> reading 6/8/21  
2<sup>nd</sup> reading 6/15/21

## SECTION II

**Article 3, Section 3-18, subsection 3-18.43 is hereby amended and moved to Article, Section 3-21, new subsection 3-21.104 of the County of Alameda Salary Ordinance as follows:**

3-18.43 — Effective June 3, 2018, not to exceed one (1) position of Job Code 0465SM, Chief Departmental Human Resources Officer, when assigned oversight of facilities management and staff development that includes departmental technical training with a training staff of over 50 employees, in addition to directing, planning, organizing and managing the human resources program in the Alameda County Social Services Agency, shall receive an additional ten percent (10%) compensation. This footnote shall no longer apply when the incumbent employee is no longer assigned the additional oversight of the aforementioned areas.

3-21-104 – Effective July 11, 2021, not to exceed one (1) employee in Job Code 0465SM, Chief Departmental Human Resources Administrator, in each of the Alameda County Social Services Agency ("SSA") and Health Care Services Agency ("HCSA"), when assigned, in addition to their regular assignment, oversight of staff development that includes departmental technical training with a training staff of over 50 employees or Emergency Medical Services Corps and Alameda County Healthcare Pipeline programs, in SSA or HCSA, respectively, shall receive up to an additional eight percent (8%) compensation of the base pay. This footnote shall no longer apply when either employee is no longer assigned the additional oversight of the aforementioned areas. This footnote will be subject to a review by the Director of Human Resource Services on or before July 10, 2023.

## SECTION III

This ordinance shall take effect immediately, and before the expiration of fifteen days after its passage, shall be published once with the names of the members voting for and against it in the Inter-City Express, a newspaper published in the County of Alameda.

Gov. Code Sec. 31461. (a) "Compensation earnable" by a member means the average compensation as determined by the board, for the period under consideration upon the basis of the average number of days ordinarily worked by persons in the same grade or class of positions during the period, and at the same rate of pay. The computation for any absence shall be based on the compensation of the position held by the member at the beginning of the absence. Compensation, as defined in Section 31460, that has been deferred shall be deemed "compensation earnable" when earned, rather than when paid.

(b) "Compensation earnable" does not include, in any case, the following:

(1) Any compensation determined by the board to have been paid to enhance a member's retirement benefit under that system. That compensation may include:

(A) Compensation that had previously been provided in kind to the member by the employer or paid directly by the employer to a third party other than the retirement system for the benefit of the member, and which was converted to and received by the member in the form of a cash payment in the final average salary period.

(B) Any one-time or ad hoc payment made to a member, but not to all similarly situated members in the member's grade or class.

(C) Any payment that is made solely due to the termination of the member's employment, but is received by the member while employed, except those payments that do not exceed what is earned in each 12-month period during the final average salary period regardless of when reported or paid.

(2) Payments for unused vacation, annual leave, personal leave, sick leave, or compensatory time off, however denominated, whether paid in a lump sum or otherwise, in an amount that exceeds that which may be earned in each 12-month period during the final average salary period, regardless of when reported or paid.

(3) Payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise.

(4) Payments made at the termination of employment, except those payments that do not exceed what is earned in each 12-month period during the final average salary period, regardless of when reported or paid.

Gov. Code Sec. 7522.34. (a) "Pensionable compensation" of a new member of any public retirement system means the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules.

(b) Compensation that has been deferred shall be deemed pensionable compensation when earned rather than when paid.

(c) "Pensionable compensation" does not include the following:

(1) Any compensation determined by the board to have been paid to increase a member's retirement benefit under that system.

(2) Compensation that had previously been provided in kind to the member by the employer or paid directly by the employer to a third party other than the retirement system for the benefit of the member and which was converted to and received by the member in the form of a cash payment.

(3) Any one-time or ad hoc payments made to a member.

(4) Severance or any other payment that is granted or awarded to a member in connection with or in anticipation of a separation from employment, but is received by the member while employed.

(5) Payments for unused vacation, annual leave, personal leave, sick leave, or compensatory time off, however denominated, whether paid in a lump sum or otherwise, regardless of when reported or paid.

(6) Payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise.

(7) Any employer-provided allowance, reimbursement, or payment, including, but not limited to, one made for housing, vehicle, or uniforms.

(8) Compensation for overtime work, other than as defined in Section 207(k) of Title 29 of the United States Code.

(9) Employer contributions to deferred compensation or defined contribution plans.

(10) Any bonus paid in addition to the compensation described in subdivision (a).

(11) Any other form of compensation a public retirement board determines is inconsistent with the requirements of subdivision (a).

(12) Any other form of compensation a public retirement board determines should not be pensionable compensation.

**5. DISABILITY AND DEATH BENEFIT CLAIMS**

**A. Discussion and Possible Motion on Claim for Service-Connected Surviving Spouse Allowance**

**This item will be addressed in open session (materials are included in the public agenda packet), but the Board may go into Closed Session to received advice from counsel, per Gov't Code § 54956.9(d)(2)(Conference With Legal Counsel—Anticipated Litigation: significant exposure to litigation):**

**Deceased Member: Oscar Rocha**

**Surviving Spouse: Carol Maureen Ennor**


**Non-Service-Connected Surviving Spouse Allowance Effective: July 24, 2020**



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*Office of the Chief Counsel*

To: Members of the Board of Retirement  
From: Jeff Rieger, Chief Counsel  
Meeting: September 16, 2021  
Subject: **Maureen Ennor's Claim For A Service-Connected Surviving Spouse Allowance**



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**INTRODUCTION**

Safety Member Oscar Rocha died of COVID-19 on July 23, 2020. ACERA has granted Mr. Rocha's surviving spouse, Maureen Ennor, a non-service-connected surviving spouse allowance under Gov't Code § 31781.1, without prejudice to her right to pursue a service-connected surviving spouse allowance under Gov't Code § 31787. That request for a service-connected allowance will be before the Board at its September 16, 2021 meeting.

**BACKGROUND**

The question before the Board is whether Mr. Rocha caught the coronavirus at work (service-connected) or outside of work (non-service-connected). After reviewing the materials Ms. Ennor's counsel (Edward Lester) submitted, I could not make a definitive recommendation to the Board one way or the other.<sup>1</sup> While it is possible that Mr. Rocha caught the coronavirus at work, an OSHA Investigation Summary explains: "During the course of the investigation by the Division it was found that the employee had a significant exposure incident to [REDACTED] while they were in the community between June 16 and 19 of 2020." It also states that, on June 22, 2020, Mr. Rocha notified his employer that "[REDACTED] had been diagnosed with COVID-19, and as a result he would be self-quarantining at home." Mr. Rocha wrote to another person that same day that "[REDACTED] had been diagnosed with COVID-19 and was hospitalized at San Ramon Regional Medical Center" and, at that time, Mr. Rocha "was experiencing mild symptoms." See Exhibit C. Based on the information Ms. Ennor has provided, it appears that she is the person whose name is redacted in those records. These facts raise the possibility that Mr. Rocha may have caught the coronavirus in the community, rather than on the job.

ACERA does not have established procedures for making service-connected death determinations when the service-connection is not obvious (e.g., gunshot or car accident on the job). ACERA does, however, have Disability Retirement Procedures ("DRP"), which

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<sup>1</sup> Although Mr. Rocha's death was determined to be service-connected in the workers' compensation context, that determination is not binding on ACERA. See, e.g., *McIntyre v. Santa Barbara County Employees' Retirement System, Board of Retirement* (2001) 91 Cal.App.4th 730, 736 ("The Board is responsible for administering the retirement fund. The Board must, therefore, make its own determination on the factual question of whether a disability is service connected").



are used, in part, to make service-connected determinations. In that process, the Board receives recommendations from its Medical Advisor, MMRO. That process also includes participation from the Office of County Counsel, which may investigate a service-connection claim and decide whether to advocate against that claim. On May 27, 2021, I advised Mr. Lester of staff's plan to utilize the aspects of the DRP that pertain to service-connection determinations, so that the Board would receive a recommendation from MMRO and the Office of County Counsel could play the same role it plays in the disability retirement context.

In mid-June, Mr. Lester requested an opportunity to appear before the Board, as he and Ms. Ennor were concerned about the time and expense involved in the DRP process. Board Vice-Chair Godfrey granted that request and placed this matter on the July 15, 2021 agenda.<sup>2</sup> On July 15, 2021, Mr. Lester asked to continue this matter to a future meeting and that request was granted.

Ms. Ennor, her counsel and a representative from the Office of County Counsel were invited to submit materials for the Board's consideration at the September 16, 2021 meeting. Ms. Ennor's submission is attached as Exhibit A. That submission includes a new declaration that was not included in the agenda backup for the July 15, 2021 meeting. The Office of County Counsel's submission is attached as Exhibit B.

Additionally, both parties have submitted arguments regarding Gov't Code § 7523, which was approved by the Governor and filed with the Secretary of State on July 23, 2021, but will not be operative until January 1, 2022. Once operative, Gov't Code § 7523 will establish a rebuttable presumption that a safety member's *disability* due to COVID-19 is service-connected. The pending Gov't Code § 7523 does not expressly reference *death* benefits. Ms. Ennor contends that Gov't Code § 7523 will apply to death benefits. See Exhibit D. The Office of County Counsel contends that Gov't Code § 7523 will not apply to death benefits. See Exhibit E. ACERA's outside counsel, Ashley Dunning, advises that (a) Gov't Code § 7523 most likely will apply to death benefits, but (b) it will not apply to any Board determinations that are made before January 1, 2022. See Exhibit F.

### **BOARD PROCEEDINGS AT SEPTEMBER 16, 2021 MEETING**

This matter will be discussed in open session,<sup>3</sup> but the Board will also have a closed session item on the agenda, pursuant to Gov't Code § 54956.9(d)(2), so that the Board may consult with Ms. Dunning confidentially. Any such closed session will include only the Board members and Ms. Dunning. In open session, Ms. Ennor, her counsel and a representative from the Office of County Counsel will have the opportunity to make an oral presentation and answer the Board's questions.

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<sup>2</sup> Board Chair Amaral has recused himself from this matter because, as a Commander in the Alameda County Sheriff's Office, he helped Ms. Ennor apply for federal benefits for officers who die in the line of duty.

<sup>3</sup> The legal authority that allows for closed sessions for disability applications (Gov't Code § 54957(b)) does not apply to death benefit applications. See 88 Ops. Cal. Atty. Gen. 16 (2005).

The Board may take any action within its authority, including: (1) granting the service-connected surviving spouse allowance, (2) denying the service-connected surviving spouse allowance, (3) seeking further information for consideration at a later meeting, or (4) referring the matter to a Hearing Officer to prepare a recommendation to the Board after conducting an evidentiary hearing.

Whether the Board has enough information to make a final decision, and what that decision should be, is within the Board's discretion, in consultation with Ms. Dunning. Staff's initial plan had been to proceed through the DRP as it relates to service-connection determinations. Ms. Ennor has since submitted a new declaration that provides further evidence of service-connection. Most significantly, she has submitted a sworn statement that Mr. Rocha was experiencing symptoms as early as June 12, 2020. If true, this may tend to support a finding that he caught the virus before she did (according to her timeline in Exhibit A, she was diagnosed on June 19, 2021). Ms. Ennor's declaration does, however, leave some questions unanswered, such as (a) how much Mr. Rocha and Ms. Ennor avoided contact with other people outside of his work, (b) whether either of them were exposed to other individuals outside of his work who tested positive for the coronavirus, and (c) when she first started experiencing symptoms in relation to his first symptoms. Further, the statements in her declaration have not been tested with potentially contradictory evidence and cross-examination. Finally, if the new presumption under Gov't Code § 7523 applies to death benefits, as Ms. Dunning advises it likely does, then that presumption will substantially assist Ms. Ennor in establishing service-connection, but Gov't Code § 7523 will not be operative until January 1, 2022.

If the Board finds that further proceedings would be prudent before it makes a final decision, it has broad discretion to implement any one of the four options discussed above, or some variation of those options (e.g., an expedited version of the DRP process).<sup>4</sup>

Doug Minke from MMRO and I will be available at the September 16, 2021 meeting to answer the Board's questions. Ms. Dunning will be available to advise the Board in open session and/or in closed session if the Board determines a closed session is necessary.

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<sup>4</sup> For example, the Board might implement an expedited version of the DRP that (1) allows Ms. Ennor to finalize her submission with any documents or arguments she believes are appropriate for consideration by MMRO, with the final submission forwarded to the Office of County Counsel, (2) allows the Office of County Counsel 30 days to respond to Ms. Ennor's submission with any documents or arguments it believes are appropriate for MMRO's consideration, (3) requests that MMRO provide a Recommendation as soon as practicable after receiving the materials from Ms. Ennor and the Office of County Counsel, and (4) brings MMRO's Recommendation to the next Board meeting that is at least 20 days after ACERA receives MMRO's Recommendation.

# **Exhibit A**

**Carol Maureen Ennor Rocha's  
Submission**



**Carol Maureen Ennor Rocha Declaration  
Submitted After July 15, 2021, Board Meeting**



1  
2 IN THE MATTER OF CAROL MAUREEN  
3 ENNOR ROCHA AND OSCAR ROCHA  
4 (DEC'D) BEFORE THE BOARD OF  
5 TRUSTEES OF THE ALAMEDA COUNTY  
6 RETIREMENT ASSOCIATION

**DECLARATION OF CAROL MAUREEN  
ENNOR ROCHA IN SUPPORT OF  
SERVICE-CONNECTED DEATH  
BENEFITS FOR ACERA RETIREE  
SURVIVING SPOUSE**

7 I, Carol Maureen Ennor Rocha, declare as follows:

8 1. I am the lawful spouse of Oscar Rocha in this matter. I make this declaration in  
9 support of an application for a service-connected death benefit for an ACERA retiree's surviving  
10 spouse. The facts stated in this declaration are based on my own personal knowledge except as to  
11 any matters stated on information and belief, and as to those matters, I am informed and believe  
12 them to be true. If called upon as a witness in this matter, I could and would testify competently to  
13 the matters set forth below.

14 2. I am not currently employed. My most recent place of employment was Cielito's  
15 Mexican Restaurant where I worked as a waitress. I last worked for Cielito's on December 23, 2019.  
16 I have not worked for any employer or at any jobsite since that day.

17 3. Since the day my husband Oscar Rocha ("Oscar") died on July 23, 2020, I have  
18 endured severe financial hardship. ACERA did not start paying non-service-connected retiree death  
19 benefits until June 2021. This is despite Oscar designating me as his beneficiary for retiree death  
20 benefits several years before he passed away. Two weeks after Oscar died, ACERA cut off my health  
21 insurance benefits. I learned this from my family doctor who, at a doctor's appointment, informed  
22 me that my health insurance benefits had been canceled. When I contacted ACERA, I was informed  
23 that my health insurance would only be reinstated if it was determined that Oscar had died in the  
24 line-of-duty. Since August 2020, I have paid out-of-pocket for continuation of health insurance  
25 benefits through COBRA. In short, just after I buried my late husband who died of COVID-19, I  
26 was forced into a financial nightmare because a) ACERA did not recognize me as Oscar's lawful  
27 wife, and b) ACERA did not recognize Oscar's death as being in the line-of-duty.

28 //

1           4.       Oscar and I had planned to retire in January 2021. We had planned to live out the rest  
2 of our lives together in retirement after January 2021. The COVID-19 pandemic, the shutdown of  
3 Rene C. Davidson Courthouse where Oscar worked, and Oscar's reassignment to Santa Rita Jail  
4 forever changed our lives.

5           5.       Beginning in March 2020, Oscar started working in Santa Rita Jail on a full-time  
6 basis. In April 2020, I recall learning that the first COVID-19-positive patient was discovered at  
7 Santa Rita Jail. Oscar and I both became deeply concerned that he might become sick working in  
8 this environment. He insisted on working because Sheriff Ahern and other deputies he had known  
9 for decades depended on him to show up to Santa Rita Jail and carry out his assigned job duties.

10          6.       During the week leading up to June 19, 2020, based on information and belief, Oscar  
11 became infected with COVID-19 while working at Santa Rita Jail. I know now that at least two  
12 coworkers who worked together with Oscar in Santa Rita Jail had tested positive for COVID-19 on  
13 or around the same time that he did, and a third coworker was exposed to COVID-19, according to  
14 the Alameda County Sheriff Office's Cal-OSHA Injury Log. (See attached as Exhibit "A" to the  
15 Declaration of Maureen Ennor Rocha, Alameda County Sheriff's Office Log of Work-Related  
16 Injuries and Illnesses")

17          7.       On June 12, 2020, Oscar started showing symptoms of COVID-19. He came home  
18 feeling sick and complained that he was feeling rundown. Based on information and belief, Oscar  
19 became infected with COVID-19 at Santa Rita Jail, and he contracted this disease from multiple  
20 coworkers who tested positive for COVID-19 or had COVID-19 exposures on or around the same  
21 time he did.

22          8.       On June 18, 2020, Oscar worked his last full day of work at Santa Rita Jail.  
23 Thereafter, his COVID-19 symptoms became too severe to carry out his job duties. Oscar submitted  
24 a workers' compensation claim for benefits in relation to his COVID-19 illness.

25          9.       On June 29, 2020, Oscar was transported to John Muir Hospital via ambulance where  
26 he was immediately placed on a ventilator. Every week leading up to his death, I had conversations  
27 with County of Alameda's workers' compensation claims examiner, Laura Dominguez, who  
28 informed me that the County of Alameda accepted liability for the workers' compensation claim.

1 County of Alameda did accept Oscar's illness *and death* as work-related in his workers'  
2 compensation claim.

3 10. On July 23, 2020, Oscar passed away. I will never forget the days leading up to  
4 Oscar's death. Based on information and belief, Oscar could not have gotten sick if he did not get  
5 sick at Santa Rita Jail, where he had direct contact with two coworkers who tested positive for  
6 COVID-19 and third coworker who had a confirmed exposure to COVID-19.

7 11. Oscar Rocha served the people of Alameda County for 25-years as a loyal and  
8 devoted public servant, a role model, and a leader in the law enforcement community. He went to  
9 work every day believing that if something happened to him, ACERA would take care of me. The  
10 loss of such a good man and husband caused enormous pain and suffering in my life. ACERA's  
11 decision to delay retiree pension benefits and then terminate my health insurance has caused a  
12 financial disaster. This financial disaster was unnecessary and it has terribly aggravated the pain and  
13 suffering that followed my husband's death.

14 I declare under penalty of perjury under the laws of the State of California, that the foregoing  
15 is true and correct and that this declaration was executed this 22<sup>nd</sup> day of August, in Houston, Texas.

16  
17   
18 CAROL MAUREEN ENNOR ROCHA



EXHIBIT “A”

# Log of Work-Related Injuries and Illnesses

that protects the confidentiality of employees to the extent possible while the information is being used for occupational safety and health purposes

Year 2022  
U.S. Department  
Occupational Safety and  
Health  
Form 1015-01-20

You must record information about every work-related injury or illness that involves loss of consciousness, restricted work activity or job transfer, days away from work, or medical treatment beyond first aid. You must also record significant work-related injuries and illnesses that are diagnosed by a physician or licensed health care professional. You must also record work-related injuries and illnesses that meet any of the specific recording criteria listed in 29 CFR 1904.8 through 1904.12. Feel free to use two lines for a single case if you need to. You must complete an injury and illness incident report (OSHA Form 301) or equivalent form for each injury or illness recorded on this form. If you're not sure whether a case is recordable, call your local OSHA office for help.

Establishment name \_\_\_\_\_ County of Alam  
City \_\_\_\_\_ State \_\_\_\_\_

Identify the person		Describe the case		Classify the case				Enter the number of days the injured or ill worker was		Check the injury			
(A) Case No.	(B) Employee's Name	(C) Job Title (e.g., Worker)	(D) Date of injury or onset of illness (m/d/yyyy)	(E) Where the event occurred (e.g., Loading dock north and)	(F) Describe injury or illness, parts of body affected, and object/substance that directly injured or made person ill (e.g., Second degree burns on right forearm from electrolyte torch)	CHECK ONLY ONE box for each case based on the most serious outcome for that case				Away From Work (days) (K)	On job transfer or restriction (days) (L)	(M) injury	Skin Disorder (N)
						Death (G)	Days away from work (H)	Restricted work activity, job transfer or restriction (I)	Other recordable cases (J)				
CTYA 1067-84			8/16	CA	Employee has pain and tenderness in her right shoulder, arm, back, and neck.				x	0	0	x	
CTYA 1067-51			8/16	privacy case	Employee slipped on paper and rolled her ankle				x	0	0	x	
CTYA 1067-24			8/16	Series BSA van 11 R 5225 Brookside Dublin	During the course of EE's duties, EE was exposed to COVID-19. When advised of coworkers testing positive for COVID-19, EE was immediately tested.		x			14	0	x	
CTYA 1067-20			8/17	24105 Amador St, Hayward CA	Employee slipped and fell injuring her ankles, foot and wrist.				x	0	0	x	
CTYA 1067-31			8/17	5326 Broder Road Dublin	EE contracted COVID-19 after having direct contact with multiple co-workers who tested positive for COVID-19.		x			25	0	x	
CTYA 1067-54			8/17	5325 Broder Road Dublin	EE was conducting regular duties. EE has tested positive for COVID-19.		x			14	0	x	
CTYA 1067-58			8/18	15033 Hols St Emeryville CA 94608	Employee was working out doing squats and injured his lower back and right knee.		x			73	0	x	
CTYA 1067-81			8/18	Series BSA van 11 R 5225 Brookside Dublin	EE was exposed to multiple and all employees have tested positive for COVID-19.		x			62	0	x	
CTYA 1068-01			8/18	901 E Vinyard Ave Livermore CA	Employee aches carpal tunnel in bilateral wrists due to repetitive motion.				x	0	0	x	
CTYA 1068-25			8/18	1225 Faxon Street Oakland	EE tested positive for COVID-19.				x	0	0	x	
CTYA 1068-41			8/18	5888 Gibraltar Dr., Pleasanton CA 94508	Employee pressed down on a date stamp injuring his wrist and arm.				x	0	0	x	

**Carol Maureen Ennor Rocha Materials  
Submitted For July 15, 2021, Board Meeting**

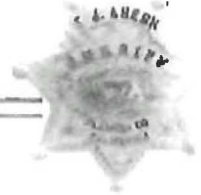
### Summary of Events Leading to Oscar Rocha's Death

- **March 16, 2020**, Alameda County Superior Court announces a closure of Court Facilities in support of County Health Officer's Shelter-in-Place Order. Sheriffs Office staff, including Deputy Sheriff Oscar Rocha, are reassigned to Santa Rita Jail.
- **March 27, 2020**, Alameda County Superior Court announces that video arraignment for detainees at Santa Rita Jail would begin. Sheriffs Office deputies including Rocha were reassigned to escort detainees to Santa Rita Jail to and from Intake, Transfer and Release Unit to Rooms 412 and 413 at Sandy Turner Educational Center.
- **April 4, 2020**, Alameda County Sheriffs Office issues memorandum regarding first confirmed case of COVID-19 among prison population at Santa Rita Jail. Deputies are ordered to wear N95 masks while within Santa Rita Jail facility. (Exhibit "A").
- **April 10, 2020**, the total number of inmates at Santa Rita Jail testing positive for COVID-19 reaches 15. Two Santa Rita Jail staff members test positive for COVID-19.
- **April 11, 2020**, Oscar Rocha presents to the emergency room at John Muir Hospital and is diagnosed with COVID-19. (Exhibit "B").
- **Between June 09, 2020 to June 17, 2020**, three Sheriff's Office employees test positive for COVID-19. The Sheriff's Office Log of Work-Related Injuries shows two employees working in Santa Rita Jail test positive for COVID-19 on June 17, 2020. A third employee working in Santa Rita Jail has a known exposure to COVID-19 on June 16, 2020. (Exhibit "C").
- **June 18, 2020**, Oscar Rocha's final full date of work and date of injury in his workers' compensation claim for COVID-19. County of Alameda stipulates that the injury occurred in the line of duty and caused Oscar Rocha's death. (Exhibit "D").
- **June 19, 2020**, Oscar's wife Maureen Ennor Rocha is diagnosed with COVID-19, and she goes to the emergency room at San Ramon Medical Center.
- **June 29, 2020**, Oscar Rocha presents to the emergency room at John Muir Hospital and is diagnosed with acute hypoxic respiratory failure and COVID -19. (Exhibit "E").
- **July 23, 2020**, Death certificate issues showing Oscar Rocha died of acute respiratory failure due to COVID-19. (Exhibit "F").
- **August 04, 2020**, Attorney General Xavier Becerra issues statement acknowledging the service-related death of Deputy Sheriff Oscar Rocha. (Exhibit "G").
- **September 30, 2020**, Sheriff Gregory Ahern acknowledges a gift due to a fallen officer, Deputy Sheriff Oscar Rocha, after a 25-year career with the Sheriff's Office. (Exhibit "H").
- **February 2, 2021**, Cal-OSHA cites Alameda County Sheriff's Office for failure to maintain records regarding Oscar Rocha's N95 respiratory testing. "Oscar Rocha was one of several employees who are required to enter housing units of Santa Rita Jail where inmates are confirmed or are suspected of having SARS-COV-2." (Exhibit "I").

# Exhibit “A”

Alameda County Sheriff's Office

Santa Rita Jail  
5325 Broder Boulevard, Dublin, CA 94568-3309



Gregory J. Ahern, Sheriff

Director of Emergency Services  
Coroner - Marshal

MEMORANDUM

DATE: April 4, 2020  
TO: All Sheriff's Office Personnel  
FROM: Yesenia Sanchez, Commander  
SUBJECT: CONFIRMED COVID-19 SRJ INMATE

From the onset of the Coronavirus Pandemic, our Agency has taken extraordinary precautions to avoid and/or slow the introduction and spread of COVID-19 into Santa Rita Jail. As of this morning, April 4, 2020, we have been notified by our medical provider Wellpath of our first confirmed positive inmate.

[REDACTED] On April 1<sup>st</sup>, the inmate began experiencing symptoms associated with possible COVID-19 and was immediately rehoused in OPHU. The inmate was tested, and the test results were received today. The inmate is now recovering in the OPHU and his condition is improving.

Per our protocols, Housing Unit 7E has been on quarantine since April 1<sup>st</sup> when the inmate first presented with symptoms associated with COVID-19. Housing Unit 7A is also on quarantine. Housing Unit 7E will be on quarantine through April 11<sup>th</sup> and A Pod through April 18<sup>th</sup>. Wellpath will be regularly monitoring the inmates housed within these two pods for any evidence of COVID-19 symptoms. In an abundance of caution, Housing Unit 7A and 7E will be professionally cleaned and sanitized.

As an Agency, we have been following CDC guidelines for the use of Personal Protective Equipment. As of this writing staff are required to wear the N95 mask and eyewear protection while within the Santa Rita Jail facility, regardless of work assignment. These precautions should be taken if you are standing within 6 feet of another person. Also, if you normally wear prescription eyeglasses, the wearing of additional eye protection is not necessary. Protective eyewear is available in the Santa Rita Jail Ready Room and Watch Commanders Office. These precautions exceed the CDC guidelines but are being implemented to protect both our employees and inmates in our custody.

# Exhibit “B”

## ED AFTER VISIT SUMMARY



Oscar Rocha MRN: 21774897

4/11/2020 Walnut Creek Emergency Department 925-947-4444

### EMERGENCY DEPARTMENT DISCHARGE INSTRUCTIONS

## Instructions

Your personalized instructions can be found at the end of this document.



Read the attached information  
Febrile Illness, Uncertain Cause (Adult) (English)



Call JOHN ROBERTS, MD in 3 days (around 4/14/2020)  
Specialty: Family Medicine  
Contact: 4165 Blackhawk Plaza Cir. #100  
Danville CA 94506-4691  
925-736-7070

## Today's Visit

You were seen by STEPHEN LEVINSON, MD

Reason for Visit

Cough

Diagnoses

- Febrile illness
- COVID-19



Lab Tests Completed

CBC w/ diff

Comprehensive metabolic panel

ER troponin-I

INFLUENZA A&B NUCLEIC ACID AMP(SWAB) \*\*Deliver to lab within 2 hrs of collection\*\* Click here for collection instructions



Lab Tests in Progress

COVID-19 (LabCorp)

Culture, blood performed 2 times



Imaging Tests

X-ray chest AP portable



Done Today

Cardiac monitoring

Monitor blood pressure

Pulse oximetry, continuous

Saline lock IV



# Exhibit “C”

**Wojcik, Spencer@DIR**

---

**From:** Dorsey, Natisha, Sheriff <ndorsey@acgov.org>  
**Sent:** Wednesday, June 17, 2020 6:02 PM  
**To:** Sanchez, Yesenia L., Sheriff  
**Cc:** Evans, Robert M., Sheriff; Evans, Alysia R., Sheriff; Firmeza, Gina, Sheriff; Pech, Christopher O., Sheriff; Gutierrez, Herminia P., Sheriff  
**Subject:** SRJ-Employees on SELF-QUARANTINE

Good afternoon Commander Sanchez,

I have a few to add.

The following employees have been directed to self-quarantine:

- [REDACTED] COVID-19 positive-Self-Quarantined for 10-days, beginning 6/11/20.
  - 06/09/20-Last day worked-confirmed wearing PPE
  - 06/11/20-Onset of COVID-19 symptoms. Dep. Bowe confirmed he was not symptomatic at work.
  - 06/15/20-Positive COVID-19 test result
- [REDACTED] COVID-19 positive-Self-Quarantined for 10-days, beginning 6/14/20.
  - 06/11/20-Last day worked-confirmed wearing PPE
  - 06/14/20-Onset of COVID-19 symptoms. Not symptomatic at work
  - 06/17/20-Positive COVID-19 test result
- [REDACTED] Prolonged direct contact with COVID-19 positive individual -Self-Quarantined for 14-days, beginning 6/15/20.
  - 06/15/20-Last contact with positive individual
  - 06/16/20-Last day worked
  - 06/17/20-Tested, pending results, no symptoms. May return to work before the 14-day quarantine period, if NEGATIVE test results and have not exhibited any COVID-19 symptoms.
- [REDACTED] COVID-19 positive-Self-Quarantined for 10-days, beginning 6/16/20.
  - 06/15/20-Last day worked-confirmed wearing PPE
  - 06/16/20-Onset of COVID-19 symptoms. Not symptomatic at work.
  - 06/16/20-Positive test result

Formal notices have been sent to all the above employees and their immediate supervisors.

Along with the quarantine timeframes listed above, all have been advised that they must meet the following guidelines before returning to work:

1. 10-days after the first onset of symptoms (fever, or cough and headache)  
**AND**
2. 72-hours fever-free (under 100.4° F) without the use of fever-reducing medication  
**AND**
3. Symptoms have improved

Have a good evening.

**Wojcik, Spencer@DIR**

---

**From:** Evans, Alysia R., Sheriff <AEvans@acgov.org>  
**Sent:** Monday, June 29, 2020 9:16 AM  
**To:** Okada, Reiko, Public Health, DCDCP  
**Subject:** RE: Oscar Rocha's schedule

Hi Reiko,  
Oscar Rocha lives in [REDACTED]

Name: Oscar Rocha

DOB: [REDACTED]

Address: [REDACTED]

Phone: [REDACTED]

Also I got word of two additional positives on Sunday, one from ITR-Mids and D-Team Security. [REDACTED]

The D-Team Security person is: [REDACTED]

ACPHD

Communication



**Alysia Evans, MPA** | Chief, Human Resources  
Alameda County Sheriff's Office Human Resources  
1401 Lakeside Drive | Oakland, California 94612  
Office 510-208-9813 | Facsimile 510-208-9868  
[AEvans@acgov.org](mailto:AEvans@acgov.org) | QJC 26018

**From:** Okada, Reiko, Public Health, DCDCP  
**Sent:** Sunday, June 28, 2020 3:15 PM  
**To:** Evans, Alysia R., Sheriff <AEvans@acgov.org>  
**Subject:** RE: Oscar Rocha's schedule

Sorry, also forgot to ask if this is an Alameda County resident.

Thanks,  
Reiko

**From:** Okada, Reiko, Public Health, DCDCP  
**Sent:** Sunday, June 28, 2020 3:08 PM  
**To:** Evans, Alysia R., Sheriff <AEvans@acgov.org>

OSHA's Form 300 (Rev. 01/2004) is a mandatory record-keeping document. This form must be maintained by employers with federal contracts or subcontracts that require compliance with OSHA's record-keeping requirements. The employer is required to maintain a record of all work-related injuries and illnesses that result in lost work days, restricted work days, or medical treatment beyond first aid. You must also record significant work-related injuries and illnesses that are diagnosed by a physician or licensed health care professional. You must also record work-related injuries and illnesses that meet any of the specific recording criteria listed in 29 CFR 1904.11 through 1904.12. Fill true to use two lines for a single case if you need to. You must complete an injury and illness incident report (OSHA Form 301) or equivalent form for each injury or illness recorded on this form. If you're not sure whether a case is recordable, call your local OSHA office for help.

# **OSHA's Form 300 (Rev. 01/2004)** **Log of Work-Related Injuries and Illnesses**

**Attention:** This form contains information relating to employee health and must be used in a manner that protects the confidentiality of employees to the extent possible while the information is being used for occupational safety and health purposes.

Year **2020**  
**U.S. Department of Labor**  
 Occupational Safety and Health Administration

Form approved OMB no. 1218-0178

Establishment name \_\_\_\_\_ County of **Alameda**  
 City \_\_\_\_\_ State \_\_\_\_\_

Identify the person		Describe the case		Classify the case		Enter the number of days the injured or ill worker was		Check the "injury" column or choose one type of illness								
(A) Case No.	(B) Employee's Name	(C) Job Title (e.g., Welder)	(D) Date of injury or onset of illness (mo./day)	(E) Where the event occurred (e.g., Loading dock north end)	(F) Describe injury or illness, parts of body affected, and object/substance that directly injured or made person ill (e.g., Second degree burns on right forearm from acetylene torch)	CHECK ONLY ONE box for each case based on the most serious outcome for that case		Away From Work (days)	On job transfer or restriction (days)	(M) injury	(N) Skin Disorder	(O) Respiratory Condition	(P) Poisoning	(Q) Hearing Loss	(R) All other illnesses	
						(G) Death	(H) Lost workday	(I) Job transfer or restriction	(J) Other recordable cases	(K)	(L)	(1)	(2)	(3)	(4)	(5)
CTYA 1067 84			8/16	CA	Employee has pain and tenderness in her right shoulder, arm, back, and neck.				x	0	0	x				
CTYA 1067 51			8/16	privacy case	Employee stepped on paper and rolled her ankle.				x	0	0	x				
CTYA 1067 24			8/16	Santa Rita Jail ITR 5326 Broder Blvd Dublin	During the course of EE's duties, EE was exposed to COVID-19. When advised of coworkers testing positive for COVID-19, EE was immediately tested.		x			14	0	x				
CTYA 1067 20			8/17	24100 Amador St, Hayward CA	Employee tripped and fell injuring her knees, ankles, foot and wrist.				x	0	0	x				
CTYA 1067 31			8/17	5306 Broder Blvd Dublin	EE contracted COVID-19 after having direct contact with multiple co-workers who tested positive for COVID-19.		x			25	0	x				
CTYA 1067 54			8/17	5326 Broder Blvd Dublin	EE was conducting regular duties. EE has tested positive for COVID-19.		x			14	0	x				
CTYA 1067 50			8/18	8302 Holtz St Emeryville CA 94608	Employee was working out doing squats and injured his lower back and right knee.		x			73	0	x				
CTYA 1067 67			8/18	Santa Rita Jail 5326 Broder Blvd Dublin	EE was exposed to inmates and jail staff who have tested positive for COVID-19.		x			82	0	x				
CTYA 1068 01			8/18	901 E. Varney Ave. Livermore CA	Employee strages carpal tunnel to phlebotomists wrists due to repetitive motion.				x	0	0	x				
CTYA 1068 25			8/18	1225 Fallon Street Oakland	EE tested positive for COVID-19		x			0	0	x				
CTYA 1067 41			8/18	5569 Gibraltar Dr., Pleasanton CA 94588	Employee pressed down on a date stamp injuring her wrist and arm.				x	0	0	x				
CTYA 1067 42			8/18	Santa Rita Jail housing Unit 5326 Broder Blvd Dublin	EE was conducting regular duties. EE contracted COVID-19 from coworker.		x			16	0	x				
CTYA 1067 32			8/19	Santa Rita Jail ITR 5326 Broder Blvd Dublin	EE tested positive for COVID-19 while working ITR at Santa Rita Jail		x			16	0	x				

# Exhibit “D”

STATE OF CALIFORNIA  
DIVISION OF WORKERS' COMPENSATION  
WORKERS' COMPENSATION APPEALS BOARD  
STIPULATIONS WITH REQUEST FOR AWARD  
(Death Case)



ADJ13527325

Case Number 1

Case Number 2

Venue Choice is based upon: (Completion of this section is required)

- ☐ County of residence of employee (Labor Code section 5501.5(a)(1) or (d).)
- ☒ County where injury occurred (Labor Code section 5501.5(a)(2) or (d).)
- ☐ County of principal place of business of employee's attorney (Labor Code section 5501.5(a)(3) or (d).)

OAK

Select 3 Letter Office Code For Place/Venue of Hearing (From the Document Cover Sheet)

Adult Dependent #1 Information

CAROL MAUREEN

First Name

MI

ENNOR

Last Name

3300 TOWERS BLVD., #1338

Address/PO Box (Please leave blank spaces between numbers, names or words)

SEABROOK

City

TX

State

77586

Zip Code

Adult Dependent #2 Information

First Name

MI

Last Name

Address/PO Box (Please leave blank spaces between numbers, names or words)

City

State

Zip Code

Adult Dependent #3 Information

First Name

MI

Last Name

Address/PO Box (Please leave blank spaces between numbers, names or words)

City

State

Zip Code

Employer Information (Completion of this section is required)

☐ Insured

☒ Self-Insured

☐ Legally Uninsured

☐ Uninsured

COUNTY OF ALAMEDA

Employer Name (Please leave blank spaces between numbers, names or words)

1401 LAKESIDE DRIVE 12TH FLOOR

Employer Street Address/PO Box (Please leave blank spaces between numbers, names or words)

OAKLAND

City

CA

State

94612

Zip Code

Insurance Carrier Information (If known and if applicable - Include even if carrier is adjusted by claims administrator)

Insurance Carrier Name (Please leave blank spaces between numbers, names or words)

Insurance Carrier Street Address/PO Box (Please leave blank spaces between numbers, names or words)

City

State

Zip Code

Claims Administrator Information (If known and if applicable)

YORK ROSEVILLE

Name (Please leave blank spaces between numbers, names or words)

PO BOX 619079

Street Address/PO Box (Please leave blank spaces between numbers, names or words)

ROSEVILLE

City

CA

State

95661

Zip Code



The parties to the above-entitled action hereby enter into the following stipulations and request the Division of Workers' Compensation to issue Findings and Award forthwith, without further proceedings.

IT IS HEREBY STIPULATED AS FOLLOWS:

1. That OSCAR \_\_\_\_\_ ROCHA \_\_\_\_\_, age 56,  
(First Name) (Last Name) (Years)

while employed at 5325 BRODER BLVD. DUBLIN, CA \_\_\_\_\_  
(Place of injury)

as a DEPUTY SHERIFF \_\_\_\_\_  
(Occupation)

by COUNTY OF ALAMEDA \_\_\_\_\_ on 06/18/2020;  
(Name of employer; an individual, co-partnership or corporation) (Date of injury: MM/DD/YYYY)

sustained injury arising out of and occurring in the course of his/her employment, proximately resulting in the death of

said employee on 07/23/2020 \_\_\_\_\_. That at said time, employer's workers' compensation insurance carrier  
(Date of Death: MM/DD/YYYY)

covering said injury was PERMISSIBLY SELF INSURED \_\_\_\_\_, and both the employer and the employee were subject to the provisions of the Labor Code of the State of California.

2. That said employee left surviving him/her, wholly dependent/partially dependent, dependents listed herein: (Give name and if a minor, date of birth and relationship to the employee. Adult dependents are listed above and minor dependents are listed below.)

Minor dependents

☐ Minor dependents?

Minor Dependent # 4 Information

\_\_\_\_\_  
Name

☐ Minor

\_\_\_\_\_  
Relation

\_\_\_\_\_  
Date of Birth: MM/DD/YYYY

Minor Dependent # 5 Information

\_\_\_\_\_  
Name

☐ Minor

\_\_\_\_\_  
Relation

\_\_\_\_\_  
Date of Birth: MM/DD/YYYY

Minor Dependent # 6 Information

\_\_\_\_\_  
Name

☐ Minor

\_\_\_\_\_  
Relation

\_\_\_\_\_  
Date of Birth: MM/DD/YYYY



3. That the said dependents are entitled to a death benefit of \$

based upon earnings of \$ 2,458.85 , payable at \$ 1,299.43 a week.  
(State weekly or monthly wages)

4. That the sum of \$ 0.00 is payable to

Total Sum Paid

on account of the burial expense. The sum of \$ None, all paid by DSA has previously been paid to

5. That all necessary medical, surgical and hospital expenses on account of said injury has been paid by defendants.  
(If not paid, explain):

☒ Yes

☐ No

6. That defendants have heretofore paid the sum of \$

on account of death benefit, for which they request credit.

Total Death Benefits Paid

7. It is necessary that a guardian ad litem and trustee be appointed for the minors, and the parties request that

First name

Last Name

be appointed such guardian ad litem and trustee.

~~The Workers' Compensation Administrative Law Judge may assume that no attorney fee is involved in the above entitled matter and should the facts be otherwise a detailed explanation shall be attached to these stipulations.~~

M Ennor 11/21/20  
Dependent or guardian signature (Date)

M Ennor 11/21/20  
Dependent or guardian signature (Date)

M Ennor 11/21/20  
Dependent or guardian signature (Date)

Applicant's Attorney or Authorized Representative:

☒ Law Firm/Attorney ☐ Non Attorney Representative

EDWARD

First Name

LESTER

Last Name

4124853

Law Firm Number

GEARY SHEA SANTA ROSA

Law Firm Name

90 SOUTH E STREET SUITE 300

(Address/PO Box (Please leave blank spaces between numbers, names or words))

SANTA ROSA

City

CA

State

95404

Zip Code

Dated 11/18/2020

MM/DD/YYYY

Edward W. Lester

Applicant Attorney Signature

Defendant's Attorney or Authorized Representative:

☒ Law Firm/Attorney ☐ Non Attorney Representative

SUSAN

First Name

HASTINGS

Last Name

4868748

Law Firm Number

LAUGHLIN FALBO OAKLAND

Law Firm Name

ONE CAPITOL MALL SUITE 400

(Address/PO Box (Please leave blank spaces between numbers, names or words))

SACRAMENTO

City

CA

State

95814

Zip Code

Dated

11/23/20

MM/DD/YYYY

S. Hastings

Defense Attorney Signature

Applicant/Employer: Carol Maureen Ennor (Oscar Rocha Dec'd.) WCAB NO(s). ADJ13527325  
ADJ13527325

(Legacy number(s): \_\_\_\_\_)

### AWARD

Based upon the Stipulations with Request for Award submitted herein:

AWARD IS MADE in favor of Carol Maureen Ennor for Oscar Rocha (Dec'd.) against  
County of Alameda, PSI and adjusted by York/SEADWICK of:

- (A) Additional Temporary Disability Indemnity in accordance with Section 2(a) above;
- (B) Permanent Disability Indemnity in accordance with Section 3 above;
- Less the sum of \$           , payable to Applicant's Attorney as the reasonable value of services rendered. ☒ Fees are to be commuted pursuant to Section 6;
- (C) Liens in accordance with Section 7;
- (D) Further medical treatment in accordance with Section 4;
- (E) Reimbursement for Medical-Legal expenses in accordance with Section 5;
- (F) Stipulations in Sections 8 and 9 are approved;
- (G) The matter is ordered taken off calendar.

(H) Settlement is for death of Deputy Oscar Rocha due to Covid. See attached addendum explaining basis of settlement.

12/8/20  
(Dated)

Thomas J. Russell Jr.

WORKERS' COMPENSATION JUDGE  
WORKERS' COMPENSATION APPEALS BOARD

VIA EMAIL  
NOTICE TO: SUSAN HASTINGS/LEWIS  
Pursuant to Rule 10629, you are designated to serve this document on all parties shown on the Official Address Record, together with a Proof of Service. You shall maintain this Proof of Service, which shall not be filed with the WCAB unless a dispute arises regarding service. A copy of the current Official Address Record accompanies this notice.

On \_\_\_\_\_, this document ☐ was personally served on all persons appearing at the hearing on that date as set forth in the minutes of that hearing ☐ was personally served on:

☐ was served by US Mail ☐ Email ☐ Fax ☐ on all persons listed on the Official Address Record ☐ was served by US Mail ☐ Email ☐ Fax ☐ on the following party or parties: \_\_\_\_\_

# Exhibit “E”

## Criteria Review

1. **Attempts to transfer to higher level of care for ECMO ongoing.**
  2. **Continue restarted decadron given decline - no guidelines for ongoing steroids beyond 10 day Recovery Trial data**
  3. **Continue cefepime for possible secondary pneumonia or bacterial infection**
  4. **Continue vancomycin but will discontinue tomorrow if no MRSA found**
  5. Unfortunately blood cultures not sent prior to initiation of antibiotics
- No need to treat rare mold found in sputum culture**

7/14: ICU

**Muir Pulmonary Critical Care****Walnut Creek Campus: Critical Care Hotline (925) 939-9912****Concord Campus: Critical Care Hotline (925) 939-8912****Date of Consultation: 7/14/2020****Reason for Consultation: Acute hypoxia, respiratory failure due to SARS-CoV2****PCP: JOHN ROBERTS, MD****LOS: 15****Payor: WORKERS' COMP / Plan: SEDGWICK CLAIMS / Product Type: Workers Comp /****Overnight Events**

Persistent high PEEP and FIO2 requirements. Variable hypercapnia. Off paralytics. Stanford declined transfer for ECMO.

**Assessment & Recommendations**

56 y.o. adult with PMH HTN, h/o TIA presents with worsening shortness of breath due to SARS-CoV2 pneumonia with acute hypoxic respiratory failure.

1. **Neurology:** Intubated and sedated  
Continue midazolam and fentanyl infusion. Paralytics held.
2. **Cardiovascular:** Hypotensive. Colloid bolus and norepinephrine infusion. Wean as able.
3. **Respiratory:** Acute hypoxic respiratory failure due to SARS-CoV2 pneumonia  
Patient currently paralyzed, unable to ventilate on volume CMV, changed to PCV. Would pursue permissive hypercapnea to limit ventilator trauma.  
Continue nightly proning  
Aggressive pulmonary toilet  
Diuresis as patient is net positive-switched from Lasix drip to twice daily dosing.

Patient was referred to several surrounding ECMO centers, because condition has been slowly deteriorating. He was declared not a candidate by both CPMC and UCSF, Stanford due to high BMI and duration of time on the ventilator. The patient's current status, reason for referral, and denials for transfer were explained in detail via telephone to patient's wife.

**Heme:** High risk for thromboembolic complications.

Lovenox 40 mg BID. Will consider increasing dosing depending on hemoglobin trend and renal function.

**Physical Examination:**

# Exhibit “F”



### CERTIFICATION OF VITAL RECORD

MARTINEZ, CALIFORNIA

3052020169305

### CERTIFICATE OF DEATH

3202007604769

[illegible]

CA CONTRADICTORY



**CERTIFIED COPY OF VITAL RECORD**  
**STATE OF CALIFORNIA, COUNTY OF CONTRA COSTA**

This is a true and exact reproduction of the document officially registered and placed on file in the office of the Contra Costa County Department of Health Services

DATE ISSUED 08/03/2020

MS

This copy is not valid unless prepared on an engraved border, displaying the date, seal and signature of the County Health Officer.



100088977

CHRISTOPHER FANTANO MD  
FAMILY HEALTH MEDICIN



ANY ALTERATION OR ERASURE VOIDS THIS CERTIFICATE

# Exhibit “G”



State of California Department of Justice



**ROB BONTA**

*Attorney General*

  
Search

Translate Website | Traducir Sitio Web

# Attorney General Becerra Issues Statement on Fallen Officer Oscar Walter Rocha, Alameda County Sheriff's Deputy

Press Release / Attorney General Becerra Issues Statement on Fallen Officer ...

Tuesday, August 4, 2020

Contact: (916) 210-6000, [agpressooffice@doj.ca.gov](mailto:agpressooffice@doj.ca.gov)

**SACRAMENTO** — California Attorney General Xavier Becerra today issued the following statement regarding the death of and today's funeral services for Alameda County Deputy Sheriff Oscar Walter Rocha:

"I ask every Californian to take a moment today to pause and honor the life and service of Oscar Walter Rocha, Deputy Sheriff with the Alameda County Sheriff's Department. Deputy Rocha passed away on July 23, 2020 from complications

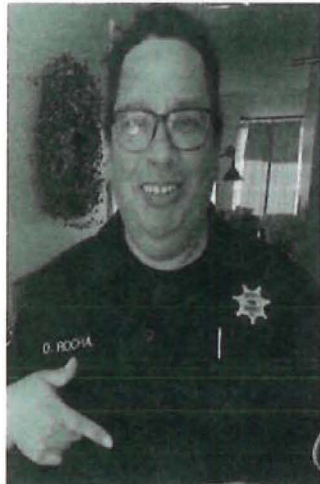
due to COVID-19. Deputy Rocha performed his duties to protect and serve the people of Alameda County for 25 years. We extend our deepest sympathies to his dear wife Maureen Ennor Rocha and his loving family. Rest in eternal peace, Deputy Rocha. EOW: 7/23/20."

# # #

---

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© 2021 DOJ



## Deputy Sheriff Oscar Walter Rocha

*Alameda County Sheriff's Office, California*

End of Watch: Thursday, July 23, 2020



[ADD TO MY HEROES](#)

### OSCAR WALTER ROCHA

Deputy Sheriff Oscar Rocha died after contracting COVID-19 during an outbreak among staff and inmates at the Santa Rita Jail in Dublin, California.

He remained on a ventilator for approximately one month before passing away.

Deputy Rocha had served with the Alameda County Sheriff's Office for 25 years and was planning on retiring in January 2021. He is survived by his wife, son, two stepchildren, and parents.

Beginning in early 2020, thousands of law enforcement officers and other first responders throughout the country contracted COVID-19 during the worldwide pandemic due to requirements of their job. Many of these first responders have died as a result of COVID-19, and continue to do so as the virus spreads across the United States.

### BIO

**Age:** 57    **Tour:** 25 years    **Badge:** Not available

📌 Communicable Disease, COVID-19

[LODD Mapping FAQs](#)

# Exhibit “H”

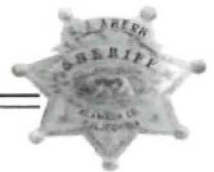
11:37



🔒 usdeputy.org

## Alameda County Sheriff's Office

Lakeside Plaza, 1401 Lakeside Drive, 12<sup>th</sup> Floor, Oakland, CA 94612-4305



Gregory J. Ahern, Sheriff

Director of Emergency Services  
Coroner - Marshal

510-272-6866

September 30, 2020

David Hinnners, Executive Director  
United States Deputy Sheriff's Association  
2909 S. Spruce  
Wichita, KS 67216

Dear Executive Director Hinnners:

Thank you for your very kind letter of condolence to our Agency in memory of our fallen officer, Deputy Sheriff Oscar Rocha. I want to extend my sincere appreciation for your thoughtfulness during this time of sorrow. Your letter and check in the amount of \$1,000.00 was forwarded to Deputy Rocha's family, Maureen Ennor. I know they will cherish your kind gesture.

Deputy Sheriff Oscar Rocha became a valued member of the Alameda County Sheriff's Office in 1996. During his 25-year career with the Sheriff's Office, he was assigned to Santa Rita Jail, Civil Section and North County Marshal. Oscar was well known at the Rene C. Davison Courthouse in Oakland, where he spent most of his career. He was an extremely kind man who loved his family, friends, co-workers and the community he served. Deputy Rocha embodied the finest qualities of a public safety officer. Even though the death of this exemplary man will long be felt by everyone who had the privilege of working with him, the memory of Deputy Rocha's dedication and courage will survive in all the men and women who knew him.

We will honor Deputy Rocha by staying strong and continuing to do our jobs to the best of our ability. The overwhelming support from our community and our fellow agencies is truly remarkable.

Again, thank you for your support.

Sincerely,

Gregory J. Ahern  
Sheriff-Coroner

GLA:dr



# Exhibit “I”

# Accident Report

ENTERED  
7/27/20

State of California  
Department of Industrial Relations

(21)

Fatality?

## DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

Date of Death 7-23-20

MOD	Date	1. Reporting ID R D 9506 [1] [4]	2. Previous Activity If yes yes [ ] No [ ] enter type: Number:	3. Event Number (Identifies this report)	1631205	
4.a. [ ] b. Establishment Name Change? Alameda County Sheriff's Office				5. Employer ID (State's option)		
6.a. [ ] b. Site address (Street, City, State, ZIP) Change? 5325 Broder Blvd, Dublin, CA 94568				7. City Code 1054	8. County Code 001	
9. Mailing Address (if different) (Street, City, State, ZIP) 1401 lakeside dr, 12th floor, Oakland, CA 94612						
Industry & ownership		10. Type of Business County Sheriff's Office		11. Primary SIC/NAICS / 922120	12. No. of employees	
13. Ownership (Mark "X" in one box) a. [ ] Private Sector b. [X] Local Government c. [ ] State Government d. [ ] Federal Agency Code						
Receipt Information		14. Reported By Laura Kitsch		15. Date 7/24/20	16. Time 3:40 [ ] AM [X] PM	
		17. Job Title Risk Analyst/Safety Manager		18. Telephone No. 510-272-6698		
Employee Representation Site		19. Group Name				
Contact		20. Name and Location Laura Kitsch				
		21. Job Title				
		22. Telephone Number 510-272-6698				
Classification Mark an "X" in one box a. [X] Fatality b. [ ] Catastrophe c. [ ] Non-Fat/Cat d. [ ] Non-Fat/Cat Rptd by Professional or M Reported by EE, ER or Other						
Event 24. Event Date 7/23/20 25. Event Time 18:45 [ ] AM [X] PM 26. Number of fatalities 1 27. Number of Hospitalized 28. Number of Nonhospitalized 29. Number of Unaccounted for						
30. Type of Event (e.g., Fall from scaffold) Employee died of COVID-19						
31. Preliminary Description		Name/Address of Injured		Age/DOB	Occupation	Injury
		Oscar Rocha			Deputy sheriff	Employee died of COVID-19
Accident Description (Specify Mechanism/Condition/Hazardous Substance): Last day of work June 19, 2020 at Santa Rita Jail - he was admitted to the hospital on 6/29/2020 and died on 7/23/2020 due to COVID-19. Next of Kin: Maureen Rocha; telephone #: [REDACTED]						
Location Where Injured		John Muir Health - Walnut Creek Medical Center				
Employee was Moved To: Other Law Enforcement						
Agencies Present at Site:						
Workers' Compensation Insurance Carrier						
(Name & Address): (for Fatalities Only)						
TAKEN BY B0020						
Action:	32. Inspection Planned? [X] Yes [ ] No	If No, Reason:	33. Supervisor(s) Assigned a. [REDACTED] b.	34. CSE/IH Assigned a. [REDACTED] b.		
35. Optional Information						
Type	ID	Value		Type	ID	Value
37. District Manager Signature: [Signature] Date 7/27 Telephone Number ( )						

CALOSH 36(S) (10/02)

Charles assigned 7/24

## Supplemental Violation Worksheet

<b>Establishment Name:</b> County of Alameda/Alameda County Sheriff's Office		<b>Inspection Number:</b> 1485096
<b>DBA Name:</b> Enter the DBA name of the establishment here.		<b>Opt. Insp. Number:</b> 005-21
<b>Citation Number/Item Number:</b> 1/1	<b>Title 8 CCR:</b> 5144(m)(2)(A)	
<b>Citation/Notice Type:</b> Regulatory	<b>Date 1BY sent:</b> Select a date.	<b>CSHO ID:</b> U7118
<b>Check if Accident Related:</b> <input type="checkbox"/> <b>Check if Failure-To-Abate:</b> <input type="checkbox"/>		
<p>Employer provided pay statement and timecards for Oscar Rocha</p> <p>Employer supervisors Laura Kitsch, Lucretia Akil, Alysia Evans, Gina Firmeza, and Michael Tolero all acknowledged that Oscar Rocha was an employee of Alameda County Sheriff's Office.</p>		
<b>Employee Exposure within Six Months<sup>2</sup></b> Oscar Rocha – Fit test conducted on February 8, 2019. DOSH was made aware of the violation on August 13, 2020 via a document request.		
<b>Additional Witnesses:</b> Enter text here.		
<b>Scope, Application, and Definition<sup>3</sup></b> Alameda County Sheriff's Office is an employer within the State of California who employs roughly 1,640 employees.		

### Elemental Analysis<sup>4</sup>

#	Element	How Violated/ How Applicable	Evidence
1.	(m) Recordkeeping. This section requires the employer to establish and retain written information regarding medical evaluations, fit testing, and the respirator program. This information will facilitate employee involvement in the respirator program, assist the employer in	the employer failed to establish and retain a record of the specific make and model of the respirator tested during a qualitative fit test administered to an employee required to wear a tight-fitting filtering facepiece respirator with occupational exposure to pathogens, including but not	<p>On April 4, 2020 the ACSO put out a Memorandum to all Sheriff's Office Personnel that required the use of N-95 respirators while working within the Santa Rita Jail facility, regardless of work assignment, when standing within 6 feet of another person. This was due to the first confirmed COVID-19 positive inmate being identified within the jail on the morning of April 4, 2020.</p> <p>Oscar Rocha was one of these several employees who was required to wear an N-95 respirator per the April 4, 2020 Memorandum due to known and or probable exposure to inmates who have contracted SARS-CoV-2, the virus that causes COVID-19.</p> <p>The employer submitted to the Division, on August 13, 2020 via email, Oscar Rocha's fit testing records for an</p>



## Supplemental Violation Worksheet

<b>Establishment Name:</b> County of Alameda/Alameda County Sheriff's Office		<b>Inspection Number:</b> 1485096	
<b>DBA Name:</b> Enter the DBA name of the establishment here.		<b>Opt. Insp. Number:</b> 005-21	
<b>Citation Number/Item Number:</b> 1/1		<b>Title 8 CCR:</b> 5144(m)(2)(A)	
<b>Citation/Notice Type:</b> Regulatory		<b>Date 1BY sent:</b> Select a date.	<b>CSHO ID:</b> U7118
<b>Check if Accident Related:</b> <input type="checkbox"/>			
<b>Check if Failure-To-Abate:</b> <input type="checkbox"/>			
auditing the adequacy of the program, and provide a record for compliance determinations by OSHA. <b>(2) Fit testing.</b> <b>(A) The employer shall establish a record of the qualitative and quantitative fit tests administered to an employee including:</b> <b>3. Specific make, model, style, and size of respirator tested;</b>	limited to SARS-CoV-2, the virus that causes COVID-19	N95 style respirator. The records show that the employer failed to record the specific make and model of respirator that Oscar Rocha was tested for during a qualitative fit test on February 8, 2019. *See confidential "Fit Test" section in case file*	
2.	Enter text here.	Enter text here.	Enter text here.
3.	Enter text here.	Enter text here.	Enter text here.
4.	Enter text here.	Enter text here.	Enter text here.

## Supplemental Violation Worksheet

<b>Establishment Name:</b> County of Alameda/Alameda County Sheriff's Office		<b>Inspection Number:</b> 1485096	
<b>DBA Name:</b> Enter the DBA name of the establishment here.		<b>Opt. Insp. Number:</b> 005-21	
<b>Citation Number/Item Number:</b> 1/3		<b>Title 8 CCR:</b> 5199(g)(2)	
<b>Citation/Notice Type:</b> General		<b>Date 1BY sent:</b> Select a date.	<b>CSHO ID:</b> U7118
<b>Check if Accident Related:</b> <input type="checkbox"/>			
<b>Check if Failure-To-Abate:</b> <input type="checkbox"/>			

#	Element	How Violated/ How Applicable	Evidence
1.	(g) Respiratory Protection. (2) Each employer who has any employee whose occupational exposure is based on entering any of the work settings or performing any of the tasks described in subsection (g)(4) shall establish, implement and maintain an effective written respiratory protection program that meets the requirements of Section 5144 of these orders, except as provided in subsections (g)(5) and (g)(6).	<p><b>Instance 1:</b> The employer failed to include written procedures and schedules within their respiratory protection program for cleaning, disinfecting, storing, inspecting, repairing, discarding, and otherwise maintaining respirators.</p> <p><b>Instance 2:</b> The employer failed to include written procedures within their respiratory protection program for regularly evaluating the effectiveness of the program.</p>	<p><u>Evidence for the Requirement to have a written Respiratory Protection Program:</u> The employer has employees, including Oscar Rocha, who are required to enter housing units of the Santa Rita Jail where inmates are confined or are suspected of having SARS-CoV-2, an AirID. While in the housing units Deputy Sheriff's including Oscar Rocha would supervise inmates, help nurses provide treatment to inmates, distribute meals, and perform roll call.</p> <p>On April 4, 2020 the ACSO put out a Memorandum to all Sheriff's Office Personnel that required the use of N-95 respirators while working within the Santa Rita Jail facility, regardless of work assignment, when standing within 6 feet of another person. This was due to the first confirmed COVID-19 positive inmate being identified within the jail on the morning of April 4, 2020.</p> <p><u>Evidence of Program Deficiencies:</u> The employer submitted a copy of their Respiratory Protection Program, with a revision date of 4/15/2020 to the Division in the month of August for review.</p> <p>Instance 1: Within page 2 of the employer's written respiratory protection program it fails to include written procedures and schedules for the cleaning, disinfecting, inspecting, repairing, discarding, and otherwise maintain respirator. On page 2, the program only states that "respirators will be stored in a manner that will assure protection against damage, dust, sunlight, heat and cold, excessive moisture, and damaging chemicals." The employer's plan only addresses the storing of respirators and is extremely vague and fails to include procedures for storage.</p> <p>Instance 2: The employer's respiratory protection program states that the Program Administrator is</p>

## Supplemental Violation Worksheet

<b>Establishment Name:</b> County of Alameda/Alameda County Sheriff's Office			<b>Inspection Number:</b> 1485096
<b>DBA Name:</b> Enter the DBA name of the establishment here.			<b>Opt. Insp. Number:</b> 005-21
<b>Citation Number/Item Number:</b> 1/3		<b>Title 8 CCR:</b> 5199(g)(2)	
<b>Citation/Notice Type:</b> General		<b>Date 1BY sent:</b> Select a date.	<b>CSHO ID:</b> U7118
<b>Check if Accident Related:</b> <input type="checkbox"/>			
<b>Check if Failure-To-Abate:</b> <input type="checkbox"/>			
			responsible for implementing and maintain the program but the program does not contain any procedures for regularly evaluating the effectiveness of the program.
2.	Enter text here.	Enter text here.	Enter text here.
3.	Enter text here.	Enter text here.	Enter text here.
4.	Enter text here.	Enter text here.	Enter text here.
5:			

# **Exhibit B**

## **Office of County Counsel's Submission**





## OFFICE OF THE COUNTY COUNSEL

1221 Oak Street, Suite 450, Oakland, California 94612-4296  
Telephone (510) 272-6700 Facsimile (510) 272-5020

DONNA R. ZIEGLER  
COUNTY COUNSEL

July 8, 2021

Jeff Rieger, Chief Counsel  
Alameda County Employees' Retirement Association  
475 14th Street, Suite 1000  
Oakland, CA 94612

RE: Maureen Ennor's Service-Connected Death Allowance Request

Dear Mr. Rieger:

I write in response to your June 28, 2021, letter regarding Maureen Ennor's request for a service-connected death allowance. This letter supersedes the County's July 2, 2021, letter in this matter. Based on my conversations with you and your June 28th letter, it is my understanding that Oscar Rocha, a Deputy with the Alameda County Sheriff's Office, contracted the COVID-19 virus last year and unfortunately died as a result of it. Mr. Rocha's surviving spouse, Ms. Ennor, has apparently requested a service-connected death allowance as the surviving spouse alleging that Mr. Rocha contracted the virus while working at Santa Rita Jail. Ms. Ennor, through her attorney, also provided ACERA with several documents in support of her request. In response, ACERA granted Ms. Ennor a non-service-connected death allowance, which she is currently receiving, and has placed her request for a service-connected death allowance on the ACERA Board's July 15, 2021, meeting agenda. In your letter, you inquire whether the County has an interest in Ms. Ennor's receipt of a service-connected death allowance and whether County Counsel would want to see any of the information Ms. Ennor submitted to ACERA in support of her request in advance of the Board meeting. You also state that you anticipate that your recommendation to the ACERA Board will be to seek a recommendation from your Medical Advisor as to the issue of service-connection.

As with disability retirement, the County has an interest in ensuring that the taxpayer monies in ACERA's retirement fund—to which the County substantially contributes—are appropriately distributed and thus has an interest in Ms. Ennor's receipt of a service-connected death allowance. While we agree with your recommendation to refer this matter to ACERA's Medical Advisor for a recommendation as to causation, we do not believe that that step alone provides the County with adequate due process. As an interested party to these proceedings, the County should be afforded a meaningful opportunity to weigh in as to whether Ms. Ennor is entitled to a service-connected death allowance.

While there are no set procedures for determining whether a surviving spouse is entitled to a service-connection death allowance, ACERA's Disability Retirement Procedures provide a good benchmark. These procedures recognize that the employer has an interest and vital role to play in the processing of disability benefits and provide adequate process to provide the employer notice, and an opportunity to meaningfully investigate and weigh in as to whether an employee is entitled to such benefits. For example, the procedures: (1) permit the employer to demand additional information from the employee in support of his or her application; (2) permit the employer to submit additional information related to the application to ACERA; (3) permit the employer to retain a medical specialist to review the employee's medical records and/or perform an independent medical examination of the employee; (4) permit the employer to submit a comment paper to ACERA's Medical Advisor regarding the application; (5) permit the employer

to request a hearing before a neutral hearing officer, during which evidence is received, and after which findings and recommendations are made as to issues such as service-connection and permanent incapacity; (6) permit the employer to submit written objections to the hearing officer's proposed findings and recommendations; and (7) permit the employer to request an opportunity to make an oral presentation to ACERA's Board before it makes its final decision on the application. (See ACERA Disability Retirement Procedures 2.10, 4.3, 5, 6.10-6.13, 6.22, 6.24, 6.25, & 8.2.)

No similar process has been applied in this instance, despite the County having a similar interest. Placing this matter before ACERA's Board at this juncture deprives the County of an opportunity to meaningfully investigate whether Ms. Ennor is entitled to a service-connected death allowance and, if appropriate, to advocate against the provision of such benefits. It also deprives ACERA's Board of an opportunity to make an informed decision as to these issues. While I appreciate you providing me with the documents that Ms. Ennor submitted to ACERA in support of her request, providing the County with nearly 1,600 pages of documents less than two weeks before the ACERA Board may decide to grant Ms. Ennor a service-connected death allowance, deprives the County of the ability to meaningfully review and analyze these records, consult a medical expert on the epidemiology of COVID-19, and make an informed decision as to causation.

The disability retirement procedures provide the employer with at least 30-days to conduct such a review and comment upon the employee's disability retirement application, longer if it retains specialist to conduct a medical records review. (See ACERA Disability Retirement Procedure 2.10(d).) The procedures further provide for an evidentiary hearing before a neutral hearing officer, who makes a recommendation to the ACERA Board as how to proceed with the application. (See ACERA Disability Retirement Procedure 6.) Case law interpreting the provision of the County Employee's Retirement Law providing for service-connected death allowances suggests that an evidentiary hearing should take place before the retirement board renders its decision. (See *Kuntz v. Kern County Employees' Retirement Assn.* (1976) 64 Cal.App.3d 414, 419-420 [surviving spouse's application for a service-connected death allowance was heard before a referee appointed by the retirement board who received evidence, including a report by a doctor as to causation, and rendered a decision as to the issue which was subsequently adopted by the retirement board].)

For these reasons, the County requests that at the July 15, 2021, meeting the ACERA Board refer this matter back to ACERA's Disability Unit and order it to apply its Disability Retirement Procedures to Ms. Ennor's request for a service-connected death allowance, including permitting the County to submit a Comment Paper after it is given a meaningful opportunity to: (1) review and analyze the documents Ms. Ennor submitted to ACERA; (2) request and review Mr. Rocha's complete medical records; and, (3) consult a medical expert, if necessary. Following the Medical Advisor's recommendation, the County requests the opportunity to request an evidentiary hearing before a neutral hearing officer as to causation, and to submit written objections to the officer's proposed findings and recommendations, if necessary. If Ms. Ennor is concerned that following ACERA's Disability Retirement Procedures may cause her undue delay in receiving a service-connected death allowance, the procedures provide her with a remedy—she may request an expedited review. An expedited review aims to complete the application process in less than six months. (See Disability Retirement Procedure 3.1.)

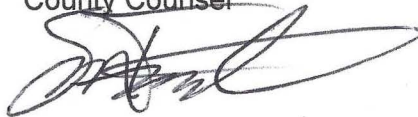
Jeff Rieger, ACERA Chief Counsel  
July 8, 2021  
Page 3

Alternatively, should the ACERA Board grant Ms. Ennor's request for a service-connected death allowance, without affording the County basic due process in this matter, the County may seek judicial review of the final decision under Code of Civil Procedure section 1094.6.

While I intend to relay this information to ACERA's Board at the July 15, 2021, meeting, I request that the Board be provided with a copy of this letter in advance of the meeting so that they are aware of the County's position. Please submit this letter to the ACERA Board. I respectfully request to withdraw my letter of July 2nd, which is superseded by this correspondence. If you have any questions regarding this letter, please call or email me.

Very truly yours,

DONNA R. ZIEGLER  
County Counsel

A handwritten signature in black ink, appearing to read 'Scott J. Feudale', written over the printed name of the Deputy County Counsel.

By  
SCOTT J. FEUDALE  
Deputy County Counsel

cc: Edward Lester, Counsel for Maureen Ennor

# **Exhibit C**

## **Portions of OSHA Report**



## Written Summary of Events- Oscar Rocha (ID #108709)

**Employee Name:** Oscar Walter Rocha

**Job Classification:** Deputy Sheriff II

**Original Hire Date:** 11/4/1996

**DOB:** [REDACTED]

**Labor Organization:** Deputy Sheriff's Association (DSA) of Alameda County  
6689 Owens Drive, Suite 100, Pleasanton, CA 94588  
Member President: Kevin Lewis (925) 463-3760

### **Two Duty Stations (sites) Assigned:**

- Courts Services-North County, Rene C. Davidson Court House, 1225 Fallon Street, Oakland, CA 94612.
- Courts Services- Room 412/413, Sandy Turner II Educational Center, Santa Rita Jail, 5325 Broder Blvd., Dublin CA, 94568.

### **Summary of events preceding death:**

- **On March 16, 2020**, the Alameda County Superior Court announced a closure of Court Facilities in support of the County Health Officer Shelter in Place order from March 17, 2020 through April 7, 2020. As a result of this closure, Sheriff's Office staff currently assigned to Courts Services were temporarily re-assigned to Santa Rita Jail.
- **On March 27, 2020**, The Alameda County Superior Court announced that video arraignment for detainees at Santa Rita Jail would begin. Sheriff's Office Deputies including Rocha were reassigned to escort detainees at Santa Rita Jail to and from the Intake, Transfer and Release (ITR) Unit to Rooms 412 and 413 in the Sandy Turner II Educational Center, to appear for their scheduled arraignment.
- **On June 19, 2020**, Deputy Oscar Rocha was assigned to video arraignment court appearance detail at Sandy Turner II Educational Center, rooms 412 and 413. This was Rocha's last working day.
- **On June 22, 2020**, Sergeant Cynthia Sass reported that she was contacted by Deputy Rocha who advised that [REDACTED] had been diagnosed with COVID-19, and as a result he would be self-quarantining at home. Deputy Rocha also sent an email to Acting Human Resources Manager Gina Firmeza, advising that [REDACTED] had been diagnosed with COVID-19 and was hospitalized at San Ramon Regional Medical Center. Additionally,

he reported that he was experiencing mild symptoms. Deputy Rocha was advised to continue to stay at home.

- **On June 26, 2020,** Deputy Rocha contacted Acting Human Resources Manager Gina Firmeza to report that he tested POSITIVE for COVID-19.
- **On June 30, 2020,** Courts Lieutenant Patrick Jones advised Human Resources Chief, Alysia Evans and Acting Human Resources Manager Gina Firmeza by email, that he had been in contact with Deputy Rocha's wife who advised that Rocha had been transported to the hospital and was currently in critical condition in ICU, in a medically induced coma and on a ventilator due to COVID-19.
- **On July 23, 2020,** Deputy Rocha passed away at John Muir Hospital in Walnut Creek, CA due to complications from COVID-19.

## Investigation Summary

Reporting ID	Investigation#	UPA Number	Event Date	Event Time	Construction
0950614	128066	1631205	07/23/2020	06:45 PM	No

## Establishment Info

Establishment/DBA Name	County of Alameda/Alameda County Sheriff's Office
------------------------	---

## Site Information

Street Address 1	5325 Broder Blvd.				
Street Address 2					
County	ALAMEDA				
City	Dublin	State	CA	Zip Code	94568

## Event

Type of Event	Death due to COVID-19			
Number of Employees				
Fatalities	Hospitalized	Non-Hospitalized	Unaccounted	
1	0	0	0	

## Abstract

What was employee doing just before incident occurred?	The employer is a local government that is engaged in detention and correctional services at the site address of 5325 Broder Blvd., Dublin, CA 94568, which has approximately 1,640 employees employed throughout the establishment and controls 686 employees at the site address.
What happened?	On June 22, 2020 a Deputy Sheriff at the Santa Rita Jail reported to the employer that [REDACTED] was recently diagnosed and hospitalized with COVID-19 and that the Deputy Sheriff had exposure and was experiencing mild symptoms. The Deputy Sheriff's last day of work was on June 19, 2020 and they remained out of work for precautionary removal. The Deputy Sheriff had a telehealth visit with their physician on June 23, 2020 where they were experiencing fever, cough, and chills. On June 24, 2020 the Deputy Sheriff received a COVID-19 test and on June 26, 2020 the Deputy Sheriff



	<p>reported to the employer that test came back positive. On June 29, 2020 the Deputy Sheriff was transported by EMS to John Muir Health, Walnut Creek Medical Center where they were admitted due to worsening shortness of breath. On June 30, 2020 the Deputy Sheriff's spouse reported to the employer that the Deputy Sheriff had been admitted to John Muir Health Walnut Creek Medical Center and was in a medically induced coma in the ICU. On July 23, 2020 the Deputy Sheriff passed away due to complications with COVID-19 at John Muir Medical Center in Walnut Creek. The Division was notified of the employee's illness and death on July 24, 2020 at approximately 3:40 PM by the employer, which does not comply with the Divisions reporting requirements for a serious illnesses. The Division initiated an opening conference with the employers Risk Analyst and Director of Risk Management on July 25, 2020. During the course of the investigation by the Division it was found that the employee had a significant exposure incident to [REDACTED] while they were in the community between June 16 and 19 of 2020.</p>
What was the injury or illness?	<p>The Deputy Sheriff was tested for COVID-19 on June 24, 2020 and received a positive test result on June 26, 2020. The employee was hospitalized on June 29, 2020 at John Muir Medical Center in Walnut Creek for the treatment of COVID-19 related symptoms. The employee's symptoms included fever, cough, chills, and shortness of breath. The employee passed on July 23, 2020 at approximately 6:58 PM caused by acute respiratory failure due to COVID-19 at John Muir Medical Center in Walnut Creek.</p>
What was the object or substance that directly harmed the employee?	<p>The Division found that the employee was directly harmed by the SARS-CoV-2 virus, the virus that causes COVID-19.</p>

Victim	
Injured/Deceased Name	Oscar Rocha
Gender	
Age	56
Victim Injury	Fatality-OSHA covered
Cause	Other
Nature of Injury	Other
IMMLang?	N
Next of Kin	
Next of Kin Name	Maureen Rocha

# **Exhibit D**

**Carol Maureen Ennor Rocha Argument  
Regarding Gov't Code § 7523**

## Jeff Rieger

---

**From:** Edward Lester <ELester@TysonMendes.com>  
**Sent:** Tuesday, August 24, 2021 3:04 PM  
**To:** Jeff Rieger  
**Cc:** Feudale, Scott, County Counsel  
**Subject:** Maureen Ennor Rocha  
**Attachments:** 20210824130038875.pdf

This message is from outside ACERA's email system. Do not open links or attachments from untrusted sources.

Jeff,

Attached is the Declaration of Maureen Ennor Rocha for the ACERA Board of Trustees' consideration.

Adopting County Counsel's position will undermine AB-845 and cause more financial and legal disaster to a surviving widow of a frontline worker. AB-845 did not set up a competing system between death benefits and disability retirement benefits. If that is what the California Legislature intended, they would have made their intentions very clear because that would cause a major outrage among front line workers and the trade associations who lobbied for this bill.

Consider the consequences of County Counsel's interpretation. Under this scenario, a widow must bear heavy financial and legal burdens as she tries to meet the burden of proof in a death benefits claim. Meanwhile, a surviving front line worker enjoys the protection of the new law in a disability retirement claim. Such an application of the new law would punish front line workers who die in the line of duty. It would punish family members of front line workers, and in this case a distraught widow. The express purpose of AB-845 is supporting and protecting front line workers like firefighters, law enforcement, and public servants. It is intended to remove legal burdens so front line workers have access to all species of retirement benefits, including death benefits.

What Maureen has gone through is a good example of the terrible ordeal that widows of front line workers have gone through during the pandemic, and will continue to go through if the presumption is not extended. Maureen sold all her possessions and moved to Texas because she could not afford to pay rent in Danville and buy health insurance after Oscar passed away. She had no income and no health insurance. She was flat broke. She suffered intense personal financial and psychological hardship. The new law is intended to help front line workers who get killed by COVID-19 or are forced into early retirement. It fills in a gap in the law between the workers' compensations-side and the disability-retirement side. It supports and protects people who are similarly situated to Maureen, so they do not suffer unnecessarily from financial and legal hardship.

AB 845 is modeled on SB 1159 – the workers' compensation presumption. Oscar qualified for the "service-connection" presumption in his Workers' Compensation death benefits claim and his regular Workers' Compensation claim. No distinction was drawn between Oscar's entitlement to Workers' Compensation medical and disability benefits, or Maureen's entitlement to Workers' Compensation death benefits. The explicit language in both COVID-19 presumptions is the same. The disability retirement statute is meant to be applied in similar fashion to the Workers' Compensation presumption. It should happen automatically. It does not require a hearing officer and medical evaluations. Again, the purpose of the statute is to alleviate the



financial and legal burdens of front line workers and their family members. It accomplishes this goal by extending the benefit of a legal presumption to front line workers who get sick in the midst of an outbreak.

The correct analysis is whether Oscar's injury qualifies for the COVID-19 presumption. If the injury qualifies for the presumption, it shifts the burden of proof. It makes no differences whether the application is for disability retirement or death benefits. That significant distinction and the enormous impact it would have on front line workers is nowhere articulated in the text of AB-845. Reading it into AB-845 would have disastrous consequences for front line workers.

AB-845 should be applied the same way the presumption has been applied in workers' compensation cases. In workers' compensation cases, the presumption is extended to the worker who gets sick in the midst of an outbreak. The worker has access to all species of benefits that flow from an accepted claim. As discussed above, Oscar's workers' compensation case was an example of that. Likewise, the presumption of "service-connection" should be extended to the worker who gets sick in the midst of an outbreak. The worker should have access to all species of benefits that flow from service-connection, including disability retirement and death benefits.

Sincerely,  
Ed Lester

# **Exhibit E**

**Office of County Counsel Argument Regarding  
Gov't Code § 7523**





## OFFICE OF THE COUNTY COUNSEL

1221 Oak Street, Suite 450, Oakland, California 94612-4296  
Telephone (510) 272-6700 Facsimile (510) 272-5020

---

DONNA R. ZIEGLER  
COUNTY COUNSEL

August 13, 2021

Jeff Rieger, Chief Counsel  
Alameda County Employees' Retirement Association  
475 14th Street, Suite 1000  
Oakland, CA 94612

RE: Maureen Ennor's Service-Connected Death Allowance Request

Dear Mr. Rieger:

I write in response to your July 26, 2021, email regarding the recent enactment of Assembly Bill 845 ("AB 845") and its effect on the burden of proof in this case. Specifically, in your email, you note that AB 845 establishes a rebuttable presumption of service-connection for safety members who retire for disability due to health complications from the COVID-19 virus. You note that the law does not reference death benefits, such as the allowance sought by Ms. Ennor, and request input from both parties as to whether this new presumption applies to Oscar Rocha's death. You further invite the parties to supplement our submissions to the ACERA Board related to this issue. To that end, I request that the Board be provided with a copy of this letter in advance its September 16, 2021, meeting so that they are aware of the County's position.

AB 845 was enacted for the sole purpose of alleviating public pension association members seeking disability retirement of the burden of having to prove that their lingering COVID-19-related physical or psychological conditions are work-related by shifting the burden of disproving the same to the employer. The presumption was not intended to be extended to surviving beneficiaries of members who died as a result of contracting COVID-19. This is apparent from both the plain language of the statute and its legislative history.

AB 845 states "[f]or the purposes of a member who *retires* for disability on the basis, in whole or in part, of a COVID-19 *related illness*, it shall be presumed that the disability arose out of, or in the course of, the member's employment." (Gov. Code, § 7523.1, subd. (a), *italics added*.) Noticeably absent from the statute is any mention of death due to COVID-19 or death benefits. (See *ibid*.)

This omission is significant when comparing AB 845 to Senate Bill 1159 ("SB 1159"), the Workers Compensation statute enacted last year which created a similar statutory presumption. Unlike AB 845, SB 1159 specifically provides for death benefits in the event an employee contacts COVID-19 at work and subsequently dies because of the virus. (Compare Labor Code, §§ 3212.86, subds. (a) & (c), 3212.87, subds. (a) & (c), & 3212.88, subds. (a) & (c) with Gov. Code, § 7523.1, subd. (a).)

The omission of any discussion of death or death benefits from AB 845 is glaring. Clearly the Legislature was aware that existing Workers' Compensation law—enacted less than a year before—created a rebuttable presumption as to entitlement to service-connected death benefits related to the COVID-19 virus. The Legislature could have, but did not, apply the same presumption to the retirement laws governing service-connected death allowances. The fact that such language is not included in AB 845, shows that the Legislature intended that the statutory presumption in AB 845 only apply to living members seeking disability retirement. (See *Vasquez*

*v. State* (2008) 45 Cal.4th 243, 253 ["In construing . . . any[] statute, our office is to simply ascertain and declare what the statute contains, not to change its scope by reading into it language that it does not contain or by reading out of it language it does"]; *Hennigan v. United Pacific Ins. Co.* (1975) 53 Cal.App.3d 1, 8 ["The fact that a provision of a statute on a given subject is omitted from other statutes related to similar subjects is indicative of a different Legislative intent for each of the statutes. [Citations.] Where a statute with reference to one subject contains a certain vital word, omission of that word from a similar statute on the same subject is significant to show a different intention"].)

This conclusion is buttressed by the legislative history of AB 845. The Senate Floor Analysis of AB 845 quoted the following statement made by the California Professional Firefighters Union in support of the bill: "[w]hile [the Workers Compensation COVID-19] presumption is critical to provide immediate care to those who contract COVID-19, it does not address the ongoing symptoms and lingering health issues created by "long-haul" COVID, which affects a certain percentage of those infected long past the typical timeframe and which has presented baffling and devastating symptoms. Many of those suffering from longer-term COVID *may be forced to retire early due to their illness.*" (Sen. Rules Com., Off. of Sen. Floor Analysis, 3d reading analysis of Assem. Bill No. 845 (2021-2022 Reg. Sess.) as amended March 31, 2021, p. 5, italics added.)

The report from the June 7, 2021, Senate Committee on Labor, Public Employment and Retirement hearing states "[f]or *members* who are eligible, this bill's COVID-19 presumption would be beneficial because *they* would not have to prove *their injury* was job-related (unless the employer offered evidence that the injury was not COVID-19 related)." (Sen. Com. on Labor, Public Employment and Retirement, Rep. on Assem. Bill No. 845 (2021-2022 Reg. Sess.) as amended March 31, 2021, p. 4, italics added.)

The report from the April 28, 2021, Assembly Committee on Appropriations hearing states that the purpose AB 845, according to its sponsor, the California State Council of the Service Employees International Union, was to protect employees who are forced to retire early due to the lingering adverse health effects of COVID-19. Specifically, it quoted the union as stating: "[w]e are just discovering the lingering effects of 'Long Haul' COVID patients, and AB 845 is necessary to protect workers should those effects prove so disabling *the worker may not be able to return to work.*" (Assem. Com. on Appropriations, Rep. on Assem. Bill No. 845 (2021-2022 Reg. Sess.) as amended March 31, 2021, p. 1, italics added.)

The report from the April 15, 2021, Assembly Committee on Public Employment and Retirement hearing made a similar comment as to the bill's purpose stating "[t]his bill may reasonably be viewed as one that takes into consideration that contracting the virus and subsequently developing 'Post-COVID-19-Syndrome' or 'Long Haul' symptoms may result in unknown and indeterminable complications to a person's physical, physiological, or psychological well-being that may not manifest upon infection, but could manifest at an unknown time, duration or severity, *which could impede one's ability to satisfactorily perform their professional duties in the future.*" (Assem. Com. on Public Employment and Retirement, Rep. on Assem. Bill No. 845 (2021-2022 Reg. Sess.) as amended March 31, 2021, p. 5, italics added.)

Perhaps the most telling comment as to the bill's purpose comes from the author itself, Assemblymember Freddie Rodriguez. The Assembly Floor analysis of AB 845 quotes Assemblymember Rodriguez as saying the following in support of his bill:

Last year, the Legislature passed, and the Governor signed [Senate Bill 1159] which . . . created a rebuttable presumption that essential employees who contracted COVID-19 were infected on the job and therefore, eligible for workers compensation due to that illness. . . .

[However,] what Senate Bill 1159 did not address were those same category of essential workers who were infected on the job and *subsequently retired due to COVID-19 and COVID-19 related illness*. [This bill] would, until January 2023, create a rebuttable presumption for specified front line workers that a COVID-19 related illness contracted on the job must be eligible for an *in-service disability retirement*. These employees include health care professionals, firefighters, law enforcement, and public servants to name a few. Front line workers infected on the job *and who need to retire due to COVID-19 and COVID-19 related illness* should be protected.

The symptoms of COVID-19, itself, has negatively impacted the long term health of those who contract it without regard to age, but those more advanced in age have a higher risk of serious illness and life threatening conditions like organ failure, heart problems, severe lung conditions, and blood clots. Additionally, according to the Mayo Clinic, COVID-19 has left individuals with long lasting and permanent conditions, such as heart, lung, and brain damage, blood clots and vessel problems, depression, anxiety, and fatigue.

(Assem. Floor Analysis, 3d reading analysis of Assem. Bill No. 845 (Reg. Sess. 2021-2022) as amended March 31, 2021, p. 2, italics added.)

Collectively these reports, and Assemblymember Rodriguez's statement in support of the bill, show that AB 845 was not intended to remove the burden for death benefit beneficiaries to prove that the deceased employee's COVID-19-related death was caused by his or her employment. Rather the law was enacted to relieve living employees who seek retirement due to the lingering health effects of COVID-19 from the burden of proving that the long-lasting health effects of COVID-19, such as lung and heart conditions, stem from their contraction of COVID-19 on the job. Unlike SB 1159, which specifically applied the statutory presumption to the receipt of death benefits, AB 845 is much more circumscribed limiting the presumption to members who are forced into early retirement due to lingering health effects caused by their contraction of the COVID-19 virus. For these reasons, AB 845 does not apply to Ms. Ennor's request for service-connected death benefits. She still bears the burden of proving that her husband's death was work related. (See *Kuntz v. Kern County Employees' Retirement Assn.* (1976) 64 Cal.App.3d 414, 420.)

Moreover, even if AB 845 were to apply in this instance, it merely shifts the burden of proof to the County; it does not vitiate the County's right to due process. As discussed in my July 8, 2021, letter to you, ACERA's Disability Retirement Procedures ("DRPs") provide the County with a meaningful opportunity to investigate and weigh in on Ms. Ennor's entitlement to service-connected death benefits. This existing procedural framework also aids the Board in reaching an informed decision. As you note in your July 27, 2021, email to Ms. Ennor's counsel, the documents submitted in support of Ms. Ennor's request raise a host of questions as to causation. Were AB 845 to apply in this instance, the need to apply the DRPs is heightened to ensure that

Jeff Rieger, ACERA Chief Counsel  
August 13, 2021  
Page 4

the County is afforded a meaningful opportunity to rebut the presumption, as the law provides. (See Gov. Code, § 7523.1, subd. (b).)

For the forgoing reasons, the County respectfully requests that the Board find that AB 845 does not apply in this instance, and Ms. Ennor still bears the burden of proving that her husband's death was work-related. If the Board does not feel that it has sufficient information to make such a determination, the County recommends that the Board refer this issue to a Hearing Officer to receiving briefing, hear argument, research the law, and make an appropriate recommendation to the Board. Regardless of the Board's decision concerning the burden of proof, the County requests that the Board apply its DRPs to Ms. Ennor's request for a service-connected death allowance to ensure that the County is afforded due process and that the Board is aided in making an informed decision.

If you have any questions regarding this letter, please call or email me.

Very truly yours,

DONNA R. ZIEGLER  
County Counsel

A handwritten signature in black ink, appearing to read 'Scott J. Feudale', written over a horizontal line.

By  
SCOTT J. FEUDALE  
Deputy County Counsel

cc: Ed Lester, Counsel for Maureen Ennor

# **Exhibit F**

**Nossaman LLP Analysis Regarding Gov't  
Code § 7523**





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Refer To File # 500118-0015

September 3, 2021

Board of Retirement  
Alameda County Employees' Retirement Association  
475 – 14<sup>th</sup> Street, Suite 1000  
Oakland, CA 94612

Re: Maureen Ennor's Application for Service-Connected Death Allowance and  
Government Code sections 7523-7523.2<sup>1</sup> ("COVID-19 presumption")

Dear Members of the Board:

On July 23, 2021, the Governor signed into law Assembly Bill No. 845 ("AB 845"), which provides a rebuttable presumption of service-connection to a member of a public retirement system in California, as defined in section 7523, subd (b), when that member "retires for disability on the basis, in whole or in part, of a COVID-19-related illness." (Section 7523.1.) The COVID-19 presumption sunsets on January 1, 2023, and thereafter is no longer be available.

This letter addresses two aspects of the new COVID-19 presumption that are pertinent to the above-referenced application for a death allowance under section 31878 of the County Employees Retirement Law ("CERL") submitted to ACERA by surviving spouse Maureen Ennor.

**Question No. 1:** Does the COVID-19 presumption apply to applications for *death allowances* sought under section 31787?

**Summary of Response to Question No. 1:** Most likely, yes. While the COVID-19 presumption statute itself does not clearly so state, we conclude that, subject to our response to Question No. 2, a court would likely deem that ACERA must permit surviving spouses to invoke the COVID-19 presumption if their deceased member spouse would have been eligible for service connected disability retirement under it, but died before retiring.

**Analysis:** Subdivision (a) of section 31787 provides, in pertinent part:

If a member would have been entitled to retirement in the event of a service-connected disability, but dies prior to retirement as the result of injury or disease arising out of an in the course of the member's employment, the surviving spouse of the member shall have the retire to elect . . . an optional death allowance.

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<sup>1</sup> All statutory references hereinafter are to the California Government Code.  
58317952.v1

(Emphasis added.) An ACERA member's entitlement to "retirement in the event of a service-connected disability" is typically determined under the provisions of CERL Article 10 relating to Disability Retirement. Article 10 includes various presumptions of service-connection, as described therein, relating to heart trouble, cancer, blood-borne infectious disease and exposure to biochemical substances. While those statutes are in the Disability Retirement provisions of CERL, they may be invoked by or on behalf of a member or the member's surviving spouse if the member dies before retiring, including in the context of an application for a service-connected death allowance under section 31787.

The COVID-19 presumption is the first disability retirement presumption that has been added to the California Public Employees' Pension Reform Act of 2013 ("PEPRA"), such that it applies to all public retirement systems in California that are subject to PEPRA. While it is true, as County Counsel notes in briefing to the Board on this matter, the language of the statute references only disability retirement and not death benefits specifically, that terminology is common when considering other presumptions of service connection under CERL. Moreover, section 31787 specifically provides that the question is whether the member "would have been entitled to retirement in the event of a service-connected disability, but dies prior to retirement as the result of [service-connected injury or disease]." That standard applies includes consideration of any applicable service-connection presumption under disability retirement law.

For these reasons, we conclude that the COVID-19 presumption should be deemed available to be invoked by eligible surviving spouses under section 31787, just as any other CERL disability retirement presumption of service-connection is so available to them, subject to the limitations of each such presumption and subject to the further limitations noted below.

**Question No. 2:** Is the COVID-19 presumption available with respect to the Board's consideration of Ms. Ennor's application for a service-connected death allowance?

**Summary of Response to Question No. 2:** This rebuttable presumption is only available to Ms. Ennor if the Board takes final action on her application *on or after January 1, 2022, and before January 1, 2023.*

**Analysis:** AB 845 was enacted on July 23, 2021, but it was not passed as urgency legislation that would be effective upon adoption. Rather, as with all other non-urgency legislation, it will become effective on January 1, 2022.<sup>2</sup>

California law also establishes, however, that the law applicable to disability retirement (or, in this case death allowance) applications is the law in effect when the retirement board *finally approves or denies the application.*<sup>3</sup>

Thus, the ACERA Board will only be able to apply the COVID-19 presumption if it takes final action on Ms. Ennor's application on or after January 1, 2022 and before January 1, 2023.

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<sup>2</sup> Cal. Const, Art. IV § 8(c)(3)

<sup>3</sup> *Wilmot v. Contra Costa County Employees' Retirement Assn.* (2021) 60 Cal.App.5<sup>th</sup> 631, 654. 58317952.v1

Thank you for the opportunity to advise on this topic. This advice is provided to the ACERA Board of Retirement only and may not be relied upon by others.

Sincerely,

A handwritten signature in black ink, appearing to read "Ashley K. Dunning". The signature is fluid and cursive, with the first name "Ashley" and last name "Dunning" clearly distinguishable.

Ashley K. Dunning  
of Nossaman LLP



## **NEW BUSINESS**

- 7.A. Motion to select the Chief Executive Officer (or his designee) to vote ACERA's Proxy on behalf of the Board of Retirement at the State Association of County Retirement Systems (SACRS) Fall Conference Business Meeting.**



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*Office of the Chief Executive Officer  
Office of Administration*

DATE: September 16, 2021  
TO: Members of the Board of Retirement  
FROM: Dave Nelsen, Chief Executive Officer  
**SUBJECT: SACRS Proxy Voting**

DN

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Twice each year, the State Association of County Retirement Systems (SACRS) requests submission of a Voting Proxy Form which, designates the member agency's representative(s) who will vote for the Board of Retirement at the business meeting during the conference. The items for vote at the Fall Conference Business Meeting were not available for this Board of Retirement meeting, but will be presented and direction can be provided at the October Board meeting.

**Recommendation**

Staff recommends that the Board of Retirement select the Chief Executive Officer (or his designee) to vote ACERA's proxy on behalf of the Board at the SACRS Fall Conference Business Meeting.

Enclosure: 1) SACRS Proxy Voting Form

**ENCLOSURE 1**



## SACRS VOTING PROXY FORM

The following are authorized by the Alameda County Retirement Board to vote on behalf of the County Retirement System at the upcoming SACRS Conference

(if you have more than one alternate, please attach the list of alternates in priority order):

Dave Nelsen: Voting Delegate  
Kathy Foster: Alternate Voting Delegate

These delegates were approved by the Retirement Board on 09/16/21.

Signature: \_\_\_\_\_  
Print Name: David Nelsen  
Position: Chief Executive Officer  
Date: September 16, 2021

Signature: \_\_\_\_\_  
Print Name: Kathy Foster  
Position: Assistant Chief Executive Officer  
Date: September 16, 2021

The person authorized to fill out this form and submit electronically on behalf of the Retirement Board:

Signature: \_\_\_\_\_  
Print Name: Dave Nelsen  
Position: Chief Executive Officer  
Date: September 16, 2021

Please send your system's voting proxy by October 15, 2021 to Sulema H. Peterson, SACRS Executive Director at [Sulema@sacrs.org](mailto:Sulema@sacrs.org).

## **NEW BUSINESS**

- 7.B. Motion to select, and provide direction to, a Trustee to vote ACERA's Proxy on behalf of the Board of Retirement at the Council of Institutional Investors' (CII) Fall Conference Business Meeting.**



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*Office of the Chief Executive Officer  
Office of Administration*

DATE: September 16, 2021  
TO: Members of the Board of Retirement  
FROM: Dave Nelsen, Chief Executive Officer *DN*  
**SUBJECT: Voting Proxy for the Council of Institutional Investors Conference**

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Per the latest revision to the *Board Operations Policy*, the Board may select an individual to vote on behalf of the Board at conferences for organizations of which ACERA is a member and votes are requested, and provide direction on how to vote. Beginning September 22, 2021, the Council of Institutional Investors (CII) will be conducting their Fall Conference, and there will be a vote on four (4) items. Those items are contained in the *CII U.S. Asset Owner Members' 2021 Fall Conference Proxy Form*, attached as Enclosure 1.

The options before the Board are threefold:

1. Do not designate a proxy. This means any attendees would not be able to vote on behalf of ACERA.
2. Designate a proxy, and give them authority to vote using their discretion. They would also be able to report out on how they voted at the October Board of Retirement Meeting. Currently, Trustees Gamble and Levy are scheduled to attend the Conference.
3. Designate a proxy, and provide direction on how to vote for each of the items. The designee would then vote the Board's wishes at the meeting.

**Staff Recommendation:** Staff recommends option 2. If an attending Trustee is willing to vote on behalf of ACERA, we recommend providing general proxy voting authority, with a follow-up report in October.

Enclosure: 1) *CII U.S. Asset Owner Members' 2021 Fall Conference Proxy Form*  
2) Business Meeting Materials

**ENCLOSURE 1**

As the business meeting will be held virtually, CII staff would appreciate receiving advance proxies on or before 5PM ET on Monday, September 20. Proxies may be emailed to [michael@cii.org](mailto:michael@cii.org) or submitted via DocuSign on request.

**CII U.S. Asset Owner Members' 2021 Fall Conference Proxy**

Date: \_\_\_\_\_

CII Member (Organization/Fund Name): \_\_\_\_\_

Member Representative (Print Name & Signature): \_\_\_\_\_

Please see the [Business Meeting Agenda and Supplemental Materials](#) for details on the ballot items.

**Ballot Item 1: Approve 2022 Budget**

(See Appendix 2 for details) \_\_\_\_\_ FOR \_\_\_\_\_ AGAINST \_\_\_\_\_ ABSTAIN

**Ballot Item 2: Approve update to Section 2.8a of CII Corporate Governance Policies on board succession planning**

(See Appendix 3 for details) \_\_\_\_\_ FOR \_\_\_\_\_ AGAINST \_\_\_\_\_ ABSTAIN

**Ballot Item 3: Approve update to Section 2.9 of CII Corporate Governance Policies on CEO succession planning**

(See Appendix 4 for details) \_\_\_\_\_ FOR \_\_\_\_\_ AGAINST \_\_\_\_\_ ABSTAIN

**Ballot Item 4: Approve update to Section 2.7 of CII Corporate Governance Policies regarding the board's role in strategy and risk oversight**

(See Appendix 5 for details) \_\_\_\_\_ FOR \_\_\_\_\_ AGAINST \_\_\_\_\_ ABSTAIN

*PLEASE NOTE: One vote per member organization. All ballots must be signed by a membership representative. U.S. Asset Owner Members may change their votes for business meeting action items at business meetings when they have previously submitted a proxy in advance of the meetings. A majority of U.S. Asset Owners must be represented in person or by ballot at Council meetings for the transaction of business. Ballot items require the affirmative vote of a majority of those voting. All ballots are confidential.*



**ENCLOSURE 2**

# **U.S. ASSET OWNER MEMBERS' BUSINESS MEETING**

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**Thursday, September 22, 2021**

**12:15 – 1:15 PM ET**

**Virtual Meeting**

**Registration link for Zoom:**

**<https://us02web.zoom.us/j/86977159917?pwd=a2tvbW45dGhKVStqZTlxeCtnaUdqZz09>**

Business Meeting Booklet Publication Date: Aug. 30, 2021

## **Business Meeting Agenda**

1. Board Chair Report (Scott Zdrazil)
2. Staff Report (Amy Borrus)
3. Financial Report (Mansco Perry, board treasurer)  
[See Appendix 1, page 4.](#)
4. Ballot Items
  - Ballot Item 1: Approve 2022 Budget (Mansco Perry)  
[See Appendix 2, page 8.](#)
  - Ballot Item 2: Approve update to Section 2.8a of CII Corporate Governance Policies on board succession planning (Ron Baker, chair, Policies Committee)  
[See Appendix 3, page 10.](#)
  - Ballot Item 3: Approve update to Section 2.9 of CII Corporate Governance Policies on CEO succession planning (Ron Baker)  
[See Appendix 4, page 12.](#)
  - Ballot Item 4: Approve update to Section 2.7 of CII Corporate Governance Policies regarding the board's role in strategy and risk oversight (Ron Baker)  
[See Appendix 5, page 14.](#)
5. Policies Committee Report (Ron Baker)  
[See Appendix 6, page 16.](#)
6. Shareholder Advocacy Committee Report (Max Dulberger/Renaye Manley, committee co-chairs)  
[See Appendix 7, page 17.](#)
7. International Governance Committee Report (Lucy Nussbaum, staff liaison)  
[See Appendix 8, page 18.](#)
8. U.S. Asset Owners Advisory Council Report (Alec Stais, chair)  
[See Appendix 9, page 20.](#)

9. Corporate Governance Advisory Council Report (Rosemary Lally, staff liaison)  
[See Appendix 10, page 22.](#)
10. Markets Advisory Council Report (Jeff Mahoney & Connor Garvey, staff liaisons)  
[See Appendix 11, page 24.](#)
11. Constituency Reports (Peggy Foran, Louis Malizia, Aeisha Mastagni, Glenn Davis-staff liaison, Associate Members)
12. Comments from the Membership  
*Any member wishing to speak is invited to address the membership.*

#### **Future CII Conferences**

March 6 – 9, 2022: Washington, D.C., Mandarin Oriental  
September 21 – 23, 2022: Boston, MA, Westin Copley Place

March 5 – 8, 2023: Washington, D.C., Mandarin Oriental  
September 10-13, 2023: Long Beach, CA, The Westin Long Beach

March 4-6, 2024: Washington, D.C., Mandarin Oriental  
September 9-11, 2024: Brooklyn, NY, New York Marriott at the Brooklyn Bridge

March 10-12, 2025: Washington, D.C. Mandarin Oriental  
September 8-10, 2025: San Francisco, Westin St. Francis

## APPENDIX 1 FINANCIAL REPORT

### 2021 Budget Update and Proposed Budget for 2022

The table below shows projected 2021 results against 2021 budget and the board-approved proposed budget for 2022. It excludes revenue and expenses for the CII Research and Education Fund (CII-REF), a CII subsidiary. CII-REF's budget is not subject to approval by CII members. The member-approved 2021 budget assumes CII-REF will cover \$50,000 in staff cost in 2021 in connection with staff's work on CII-REF publications.

	<b>2021 Budget</b>	<b>2021 Projected Results</b>	<b>2021 Projected Results as % of Budget</b>	<b>2022 Proposed Budget</b>
<b>INCOME</b>				
<b>Membership Dues</b>				
Renewing Members (all)	<b>\$ 2,597,225</b>	<b>\$ 2,793,444</b>	<b>108%</b>	<b>\$ 2,917,675</b>
<i>Renewing U.S. Asset Owner (Voting) Members</i>	<i>\$ 1,574,887</i>	<i>\$1,703,194</i>	<i>108%</i>	<i>\$ 1,793,350</i>
<i>Renewing Associate Members</i>	<i>\$ 1,022,338</i>	<i>\$ 1,090,250</i>	<i>107%</i>	<i>\$ 1,124,325</i>
New Members (all categories)	<b>\$ 128,000</b>	<b>\$ 130,000</b>	<b>102%</b>	<b>\$125,000</b>
<i>New U.S. Asset Owner (Voting) Members</i>	<i>\$ 49,900</i>	<i>\$ 40,000</i>	<i>80%</i>	<i>\$40,000</i>
<i>New Associate Members</i>	<i>\$ 78,100</i>	<i>\$ 90,000</i>	<i>115%</i>	<i>\$ 85,000</i>
<b>Total Membership Dues</b>	<b>\$ 2,725,225</b>	<b>\$ 2,923,444</b>	<b>107%</b>	<b>\$ 3,042,675</b>
<b>Other Income</b>				
Interest and dividend income	\$ 55,000	\$ 60,000	109%	\$ 55,000
Conference sponsorship/fees/etc.	\$ 553,500	\$ 175,640	32%	\$ 605,450
<i>Sponsorships</i>	<i>\$ 143,750</i>	<i>\$ 104,000</i>	<i>72%</i>	<i>\$ 188,000</i>
<i>Member-hosted meeting fees</i>	<i>\$ 38,500</i>	<i>0</i>		<i>\$ 30,000</i>
<i>Classes</i>	<i>\$ 12,000</i>	<i>0</i>		
<i>Attendance fees</i>	<i>\$ 359,250</i>	<i>\$ 71,640</i>	<i>20%</i>	<i>\$ 387,450</i>
Corporate Governance Bootcamp	\$ 95,000	\$ 55,000	58%	\$ 95,000
<b>Total Other Income</b>	<b>\$ 703,500</b>	<b>\$ 290,640</b>	<b>41%</b>	<b>\$ 755,450</b>
<b>Total Income Before Unrealized Gains/Losses</b>	<b>\$ 3,428,725</b>	<b>\$ 3,214,084</b>	<b>94%</b>	<b>\$ 3,798,125</b>

	<b>2021 Budget</b>	<b>2021 Projected Results</b>	<b>2021 Projected Results as % of Budget</b>	<b>2022 Proposed Budget</b>
<b>OPERATING EXPENSES</b>				
Conference/Meetings	\$ 566,250	\$ 358,300	63%	\$ 710,000
Communication	\$ 60,000	\$ 60,000	100%	\$ 60,000
Corporate Governance Bootcamp	\$ 100,000	\$ 36,000	36%	\$ 50,000
Depreciation	\$ 22,000	\$ 22,000	100%	\$ 22,000
Dues and Subscriptions	\$ 90,000	\$ 90,000	100%	\$ 90,000
Duplication and Printing	\$ 2,000	\$ -		0
Financial fees*	\$ 35,000	\$ 40,000	114%	\$ 40,000
Insurance/Life/Health	\$ 286,125	\$ 286,125	100%	\$ 304,723
Legal Fees	\$ 70,000	\$ 35,000	50%	\$ 70,000
Maintenance	\$ 2,500	\$ 2,500	100%	\$ 2,500
Marketing Overall	\$ 30,000	\$ 5,000	17%	\$ 20,000
Meals and Entertainment	\$ 10,000	\$ 5,000	50%	\$ 10,000
Office Equipment and Furniture	\$ 4,000	\$ 7,000	175%	\$ 8,000
Office Supplies	\$ 7,000	\$ 5,000	71%	\$ 11,000
Postage and Delivery	\$ 2,000	\$ 2,000	100%	\$ 2,000
Professional services	\$ 130,000	\$ 130,000	100%	\$ 130,000
Rent	\$ 161,500	\$ 165,652	103%	\$ 169,781
Retirement plan **	\$ 523,259	\$ 506,200	97%	\$ 653,338
Salaries/Payroll Taxes	\$ 1,741,000	\$ 1,743,100	100%	\$ 1,889,125
Travel	\$ 35,000	\$ 10,000	29%	\$ 40,000
<b>Total Operating Expenses</b>	<b>\$ 3,877,634</b>	<b>\$ 3,508,877</b>	<b>90%</b>	<b>\$ 4,282,467</b>
<b>Operating Gain/Loss (Before Investments, Pension Plan Changes, Special Items)</b>	<b>\$ (448,909)</b>	<b>\$ (294,793)</b>	<b>66%</b>	<b>\$ (484,342)</b>

\* "Financial Fees" is a new category as of 2021. Most items included previously in this category were listed under "Miscellaneous," which consisted almost entirely of credit card fees. The new "Financial Fees" now includes some financial transaction fees in addition to credit card fees.

\*\*Retirement plan administrative fees were moved in 2020 from the "Professional Services" category to the "Retirement Plan" category. The latter formerly consisted of just contributions to the plan.

## 2021 Projection

Staff projects an operating loss of around \$294,800 compared with the budgeted loss of \$448,909. Total revenues are projected to be slightly more than \$3,214,000, or about 94% of budget. Expenses are expected to be about \$3,509,000, or 90% of budget.

### Revenues

Membership dues revenues are projected to be 107% of budget at \$2,923,444. Renewal revenues were exceptionally robust (108% of budget) and new-member dues revenues look to be 2% above budget. This reflects strong work in a challenging year by CII's membership-marketing team (Melissa Fader and Kylund Arnold) and thoughtful, well-informed and well-articulated education and advocacy on a range of corporate governance, environmental and social issues; market structure and other issues of interest to CII members. Jeff Mahoney and Glenn Davis lead that work.

Non-dues revenues are projected to be \$290,640, or 41% of the budgeted amount. The 2021 budget assumed that the spring and fall conferences this year, as well as Corporate Governance Bootcamp, would be hybrid events—in-person as well as online. Covid-19 upended those plans, with the result that revenues for both virtual conferences, and Bootcamp (also virtual), will be far lower than budgeted due to sharply reduced sponsorship and attendance fees and no member-hosted meeting fees.

### Expenses

Expenses are projected to be mostly lower or on budget. The \$358,300 projected for conferences/meeting expense (63% of budget) reflects the unexpected switch to virtual-only formats. Online events are far less costly than in-person events. The total for this expense category includes the fall conference cancellation fee of \$180,328.25 that our contract with Chicago's Westin River North hotel required us to pay.

A second major expense category that is coming in under budget is retirement plan contributions. CII's contributions to our staff pension plan rose 30% vs the 40% hike we anticipated. Overall retirement expense for the year is projected to be \$506,200, or 97% of the \$523,259 budgeted amount. Total projected retirement expense, however, has shot up 150% in just three years; in 2018 it was \$202,000.

Payroll was held in check by marginal raises for some employees, none for the most highly compensated staffers and the departure in March of research analyst Ernie Barkett. We also delayed filling a vacancy—for director of research—until June.

Staff anticipates outside legal expenses will be about \$35,000, half of the budgeted amount. Travel and meals and entertainment were also lower as staff has worked mostly remotely to date. Spending on office equipment was higher (\$7,000, or 175% of budget) to cover new laptops, monitors and other equipment some staffers needed to work from home efficiently.

CII has ample reserves to withstand an operating loss this year. For CII's consolidated balance sheet at Dec. 31, 2020, see our audited financial statements for 2020 [here](#).

The unaudited CII balance sheet for July 31, 2021 appears below.

**Balance Sheet in U.S. \$ as of July 31, 2021 (unaudited)**

ASSETS		LIABILITIES & EQUITY	
Current Assets		Liabilities	
Bank Accounts	2,235,611	Current Liabilities	
Accounts Receivable	293	Total Accounts Payable	5,823
		Total Credit Cards	10,722
Other Current Assets			
Equity Funds	1,521,443	Other Current Liabilities	
Treasury Bills	1,259,375	Accrued Expense	-
Bond Funds	834,910	Accrued Salary	-
Interest Receivable	6,128	Accrued Pension Liability	225,817
Prepaid Expense	41,544	Accrued Vacation	165,814
Security Deposits	12,876	Deferred Leasehold Improvement	3,426
Total Other Current Assets	3,676,276	Deferred Rent	44,901
Total Current Assets	5,912,179	Deferred Revenue	<u>139,256</u>
		Total Other Current Liabilities	579,215
Fixed Assets			
Accumulated Depreciation	(136,045)	Total Current Liabilities	595,760
Furniture & Equipment	187,690	Total Liabilities	595,760
Leasehold Improvements	<u>9,925</u>		
Total Fixed Assets	61,570	Equity	
		Board Designated for Reserve	4,119,000
Other Assets		Unrestricted Net Assets-General	1,618,161
Total CDs	<u>1,747,717</u>	Net Income	1,388,546
Total Other Assets	1,747,717	Total Equity	7,125,706
TOTAL ASSETS	<u>7,721,466</u>	TOTAL LIABILITIES & EQUITY	<u>7,721,466</u>



## APPENDIX 2

### Approve Budget for 2022

The proposed budget the board recommends for approval is indicated in the yellow column in the table on pages 4 and 5. It includes revenue of nearly \$3.8 million and expenses of just under \$4.3 million and an operating loss of \$484,342. It reflects the board's and the staff's cautious outlook for 2022.

The proposed budget assumes an increase in total revenues, though with renewals below recent levels, at 95% of the invoiced amount. We believe we may lose more members in 2022 than we did in 2020-2021, because of ongoing pandemic-related cost-cuts and travel restrictions. We view Associate Members based outside the United States as particularly vulnerable as they have been unable to take advantage of conference education and networking in-person and have difficulty (due to time zone differences) participating virtually in CII programming.

Because of these concerns, the board chose not to add back a cost-of-living increase to the dues of U.S. Asset Owner Members that pay at the maximum rate (bundled and unbundled). As a reminder, in July 2020, the board voted to rescind the inflation increase it had approved in 2018. This change reduced the 2021 bundled dues maximum of \$31,000 to \$30,000 and the unbundled dues maximum of \$24,800 to \$24,000.

The budget assumes CII will be able to host two in-person conferences again in 2022. But staff is planning for modestly lower conference attendance fees in 2022 than we charged at the 2020 spring conference. We do not have good visibility on what "normal" attendance fee revenues are since we only started charging Associate Members and unbundled U.S. Asset Owner Members attendance fees in 2020 at the spring conference.

On the expense side, we anticipate significant higher costs in a few key areas:

- Conference expense will rise to closer to "normal" levels.
- We anticipate another big increase (30%) in contributions to the staff defined benefit pension plan, because of changes in assumptions by Principal Group, our retirement plan provider. We are budgeting for this expense to be \$653,000.

- Payroll costs will be higher in part due to the lack of a funding cushion in CII-REF. In recent years, CII has budgeted for CII-REF to cover \$50,000 of payroll attributable to educational reports that staff has produced on topics such as poison pills, SPACs, critical audit matters, sustainability reporting frameworks and board-employee interaction. Staff will fund CII-REF with any cy pres donations we received. But contributions from class action settlements are unpredictable so we do not budget for them.
- We are bracing for an uptick in insurance premiums.

### APPENDIX 3

#### Approve update to Section 2.8a of CII Corporate Governance Policies on board succession planning

The board recommends amending Section 2.8a Board Succession Planning as follows:

2.8a Board Refreshment and Succession Planning: The board should implement and disclose a board succession plan that involves preparing for future board ~~retirements~~ refreshment, board leadership, committee assignment rotations, committee chair nominations, ~~and~~ overall implementation of the company's long-term business plan and any changes in strategy. Nominating committees should monitor board composition for the distribution of skillsets, backgrounds and tenure on the board, and heed the results of board evaluations to ensure the board equips itself with competencies and experiences that will further the company's strategic goals. Boards should establish clear procedures to encourage and consider board nomination suggestions from long-term shareowners. The board should respond positively to shareowner requests seeking to discuss incumbent and potential directors.

#### Background & Intent

Boards depend on having relevant knowledge, experience and skill sets to perform their oversight function effectively. A healthy amount of director turnover plays an important part in fulfilling that objective, as boards' specific needs change over time with shifts in business strategy and market dynamics.

Optimal board composition varies according to company circumstances, and the proposed language accommodates this reality. While Section 7.1 cautions that extended periods of board service may adversely impact a director's ability to bring an objective perspective to the boardroom, the proposed amendments do not endorse tenure limits or age limits, both of which pose the risk of forcing the exit of high-contributing directors.

The proposed language adds board leadership to the board's succession planning responsibilities. This addition does not alter CII's stance on board leadership models. Section 2.4 supports independent board leadership and calls for a robust lead director at companies where the chair and CEO roles are combined.

Board refreshment can help facilitate board diversity. The proposed amendments would complement CII's long-standing support for board diversity, which is emphasized by its own subsection in the immediately following 2.8b. That language states CII's belief that board diversity, including by such considerations as background, experience, age, race, gender, ethnicity and culture, has benefits that can enhance financial performance.

The proposed language incorporates feedback that leveraging the results of board evaluations to inform future decisions about board compensation is critical toward achieving a high-functioning board. This language adds greater meaning to Section 2.8c, where CII explicitly calls for periodic board evaluations.

## APPENDIX 4

### Approve update to Section 2.9 of CII Corporate Governance Policies regarding CEO succession planning

The board recommends amending Section 2.9 CEO Succession Planning as follows:

2.9 CEO and Management Succession Planning: The board should approve and maintain a detailed CEO succession plan and publicly disclose the essential features in the proxy statement, including but not limited to: the roles of the board as a whole, various board committees and the incumbent CEO in the succession process; capabilities in the next CEO that would align with the company's long-term strategy; measures undertaken to identify candidates from both internal and external candidate pools; and processes to identify and include diverse candidates. [New paragraph break.]

An integral facet of management succession planning involves collaboration between the board and the current chief executive to develop and/or recruit the next generation of leaders ~~from within the company's ranks~~. Boards ~~therefore~~ should: (1) make sure that ~~broad~~ robust leadership recruitment and development programs are in place; and (2) ensure that those programs source and develop leaders not exclusively from within their own ranks, but also from a broad and diverse candidate pool; and ~~(2)~~ (3) carefully identify multiple candidates for the CEO role specifically, well before the position needs to be filled. To that end, the plan should address both short and long-term succession scenarios.

#### Background & Intent

The proposed title revision would better reflect Section 2.9's existing scope. Current CII policy on the board's responsibility with respect to CEO succession planning asks for the disclosure of a detailed plan, but provides little guidance on what a well-developed plan might include. The proposed update to Section 2.9 addresses this gap, albeit at a high level, at a time when many directors are assessing the strength of their boards' CEO succession plans.

Among the issues that boards are re-evaluating are whether their CEO succession plans define roles clearly, whether they support the company's overall business strategy and whether they include processes ensuring broad-based candidate pools. The proposed language acknowledges these matters as important while preserving flexibility for boards to tailor their CEO succession plans to company-specific situations and needs. The revised

language also steps back from dictating the location of companies' disclosure of their CEO succession plans, considering the length of modern proxy statements and the natural fit with other key documents commonly housed on companies' corporate governance websites.

Existing CII policy addresses diversity with respect to board composition, but is silent with respect to management team diversity. The proposed update to Section 2.9 would promote a broadening of efforts to recruit and develop management talent.

Since CII adopted its policy encouraging board diversity, more information about the value of diversity to company performance has emerged, and particularly evidence on the benefits of diverse management teams. For example, a McKinsey study last updated in 2018 found that a more diverse leadership team has a significant and positive effect on financial performance. Companies in the top quartile of racial and ethnic diversity were 33% more likely to have financial returns above their industry's median. Companies in the highest quartile for gender diversity at the executive level were 27% more likely to experience superior value creation.

Awareness of the value of management team diversity is increasing but public companies are having various degrees of success in diversifying. Among Fortune 100 companies, 26% continue to have no racial diversity in the C-Suite and 9% have no gender diversity in the C-suite, according to a review by Stanford's Rock Center for Corporate Governance. A recent University of South Carolina survey of Chief Human Resource Officers at large-cap companies suggests that addressing the lack of diverse CEOs starts with senior management team diversity.

## APPENDIX 5

### Approve update to Section 2.7 of CII Corporate Governance Policies regarding the board's role in strategy and risk oversight

The board recommends amending Section 2.7 as follows:

2.7 Board's Role in Strategy and Risk Oversight: The board has a fiduciary responsibility to oversee company performance and the management of strategy and risks. The CEO is responsible for the development of strategy, in cooperation and consultation with the board, including recognizing and planning for opportunities and risks that impact the company. A core function of the board is to oversee the performance of the CEO to ensure that an optimal strategy is pursued and appropriate risk mitigation policies are adopted and executed. ~~The board has ultimate responsibility for risk oversight.~~ The board should (1) ~~establish~~ monitor a company's risk management philosophy and risk appetite; (2) understand and ensure risk management practices for the company; (3) regularly review risks in relation to the risk appetite; and (4) evaluate how management responds to the most significant risks. [New paragraph break]

~~In determining~~ assessing the company's risk profile, the board should consider ~~the dynamics of the company~~ company-specific dynamics as well as risks across ~~its the~~ the industry and any systemic risks. Material risks can stem from many aspects of the business, including, but not limited to, the management of: capital structure, human capital, supply chain relationships, executive compensation, cybersecurity and climate change. While boards organize and divide the risk oversight function in a variety of ways, all directors share ultimate responsibility for effective risk oversight. The board must evaluate the company's strategy, taking account of material risks, and be willing to take corrective action if the CEO's performance in this role is inadequate. ~~CII policies on other critical corporate governance matters, such as executive compensation (see 5.1, CII's policy on executive compensation, below), reinforce the importance of the board's consideration of risk factors.~~ [New paragraph break]

Effective board oversight of strategy and risk ~~risk oversight~~ requires regular, meaningful communication between the board and management, among board members and committees, and between the board and any outside advisers it consults, about the company's material risks and risk management processes. The board should disclose to shareowners, at least annually, sufficient information to enable them to assess whether the board is carrying out its oversight responsibilities effectively.



Background & Intent

The proposed policy revision clarifies CII's perspective on the roles of the board and management in managing risk, incorporates the relationship between strategy in risk management, and enumerates certain risk factors that many companies may need to address.

Existing CII policy describes the elements necessary to fulfill the board's risk oversight function, including conveying sufficient information on this process to shareowners. The amended language intends to clarify that while the board can and should provide input for the risk policies adopted by the company, it is management's role to set and operate the risk management program. The board's function is to actively monitor to ensure that risks to performance are being addressed. The board should be fully aware of management's strategy to capitalize on opportunities and avoid negative outcomes, and should evaluate the performance of the CEO with respect to these challenges, and if necessary, use its CEO succession power when these challenges are not being adequately met.

The primary board functions are to oversee CEO performance and monitor the CEO's strategy and risk management. It is important for Council policies to articulate that the board has an oversight role over both strategy and risk management. Since all risks come with opportunities, the strategy used by management to navigate both elements is of pivotal importance and a primary area for director oversight.

The risks companies face are varied and numerous, even among companies within the same industry. While CII cannot and should not identify every potential risk, certain risk categories carry the potential for outsized investor harm if not adequately understood and addressed. Capital structure risk pertains to the balance of debt and equity financing as well as decisions about the rights attached to those securities, including voting and other rights. Human capital and supply chain management are critical given their impact on the business operations and contributions to firm value. Incentives created by executive compensation arrangements can drive or impede long-term out performance, largely depending on the strength of the board's role. Cybersecurity and climate change are risks that affect companies in very different ways, but present challenges globally and have the capacity to present not only enterprise risk but systemic threats as well.

## APPENDIX 6

### Policies Committee Report

The Policies Committee, comprised of the non-officer members of CII's board, reviews and recommends updates to CII's official positions on corporate governance and other matters of importance to institutional investors. These positions serve as the foundation for CII's advocacy work with policymakers as well as market participants. Ron Baker, executive director of Colorado Public Employees' Retirement Association, serves as committee chair.

Since January the committee has focused on completing a top-to-bottom review of Section 2 of CII's Corporate Governance Policies. Section 2 addresses corporate board practices. More specifically, the committee explored updating CII's positions on board succession planning; CEO succession planning; the board's role in management team diversity; and board oversight of strategy and material risk. The action items presented before U.S. Asset Owners at this business meeting reflect the outcome of this inquiry.

Other areas the committee has recently reviewed include the transparency of very large private companies, particularly those whose securities actively trade on secondary markets; the adequacy of cooling off periods for 10b5-1 trading plans; and the quality of shareholder meetings convened virtually in proxy season 2021. Looking ahead to the remainder of 2021, we anticipate reviewing CII policies on poison pills and virtual-only shareholder meetings, as well as whether the shareholder approval requirements for de-SPAC merger proposals should be amended to fulfill the vote's intended purpose as a safeguard against value destructive acquisitions. De-SPAC mergers occur when a special purpose acquisition company merges with an operating company and the operating company assumes the SPAC's public listing.

The committee welcomes U.S. Asset Owner members' input on topics that are important to them, whether through participation in comment periods, involvement in the U.S. Asset Owner Advisory Council, or informal outreach to the chair, the committee as a whole and/or CII staff.

The committee and CII staff liaison Glenn Davis warmly welcome Tracy Stewart, who joined CII in June as director of research and formally assumes the role of committee liaison this fall.

## APPENDIX 7

### Shareholder Advocacy Committee Report

The Shareholder Advocacy Committee is a conduit for members to discuss and recommend activities that promote effective corporate governance, increase participation in the advocacy of corporate governance and enhance the value of CII membership. The committee fosters member dialogue through in-person and electronic meetings and email communication.

In the past several months, the committee hosted:

- A July 2021 proxy season wrap up webinar during which 12 CII member representatives discussed their 2021 proxy season accomplishments and offered glimpses of their plans for 2022. A record number of participants logged onto the event.
- A March plenary session during which Illinois State Treasurer Michael Frerichs; Ariel Investments Chairman, Co-CEO and CIO John Rogers; and Director of Emerging Managers for the New York State Common Retirement Fund AJ Hernandez discussed the business case for diversity and inclusion in manager selection.
- A January 2021 proxy season preview webinar during which 17 CII members shared their plans for the 2021 proxy season. More than 100 CII members participated virtually.
- On September 24, the committee is hosting a plenary session on the importance of worker health and safety in responsible investing. Speakers are Liliana Calderon, manager of health and safety programs for the International Union of Bricklayers and Allied Craftworkers; Alex Sagebien, vice president of environmental health and safety for Hess; and Randi Weingarten, president of the American Federation of Teachers. The plenary session will be followed by a “lightning round” during which a roster of CII members will discuss their plans for the upcoming proxy season.

## APPENDIX 8

### International Governance Committee Report

The International Governance Committee supports efforts to expand CII's geographic scope by educating members and coordinating globally on non-U.S. corporate governance issues. The International Governance Committee is open to all members of CII and there are no term limits on committee membership. While not required by the committee's charter, there has traditionally been a steering committee for the International Governance Committee that consisted of about five members as the main active body in the committee.

This spring and summer, we rolled out a plan to revitalize the International Governance Committee. At a May meeting of the steering committee, the group expressed support for a staff recommendation to combine the steering committee with the International Governance Committee to create a single, active body at CII with international focus. The committee will meet by Zoom two to three times per year to discuss hot topics, share experiences and suggest content for CII programming.

On July 21, CII staff reached out to the current roster of about 70 International Governance Committee members to ask if they would be interested in continuing their participation in the committee given the more active role it will be taking on. In response, about 20 members asked to be taken off the committee roster. About 10 members have affirmed that they want to remain active members of this committee, or have connected the committee with colleagues who were interested in taking over their role on the committee. CII's five steering committee members will continue remain core to the committee. No changes to the charter were necessary to implement this change. The new revitalized international governance committee will meet in the fall.

The committee's virtual spring plenary session focused on the governance lessons learned from the scandal at German payment processing company Wirecard. Dr. Alexander Juschus, managing partner at Governance and Values GmbH, and Dr. Katja Langenbucher, Professor of Law at Goethe-University's House of Finance, explored the factors that contributed to the long-running fraud and governance and regulatory implications in Germany. Chair of the International Governance Committee Michael Herskovich moderated the session.

The fall plenary session will discuss a range of issues with the integrity of proxy voting in different markets. Alicia Ogawa, director of the Project on Japanese Corporate Governance

at Columbia Business School, will highlight concerns in Japan in the wake of the issues at Toshiba. Fabio Coelho, CEO of Amec Brazil, will discuss voting issues experienced by many foreign investors during the recent proxy season. Chair of the International Governance Committee Michael Herskovich will also speak about difficulties he has experienced voting in AGM's across different markets. Former steering committee member and now International Governance Committee member David Lahire, corporate governance research, knowledge manager at KPMG, will moderate the session.

Recent global developments followed by the committee or reported on in the weekly *Alert* member newsletter include the European Sustainable Finance Disclosure Regulation; the IFRS Foundation's plan for a global International Sustainability Standards Board; concerns about auditing in the Chinese market and the Holding Foreign Companies Accountable Act that could curb U.S. listings of Chinese companies; the U.K. Treasury's proposed expansion of dual-class listings; the Toshiba proxy contest and investigations about the integrity of the vote; the Dutch finance ministry proposal on audit firm rotation in special circumstances; the Australian Treasury's proposal to further regulate proxy advisors; revisions to the Japanese Corporate Governance Code and Hong Kong Exchange's consultation on a new hurdle for long-tenured directors.

## APPENDIX 9

### U.S. Asset Owners Advisory Council Report

The [U.S. Asset Owners Advisory Council](#), chaired by Alec Stais (CIO, Providence St. Joseph Health), advises the CII board and staff on issues, trends, proposed policy development, topics and speakers for CII events and membership benefits and services. The CII Board of Directors appoints up to 20 members, with up to five each from the following constituencies:

- Corporate Fund Asset Owner Members
- Labor Fund Asset Owner Members
- Public Fund Asset Owner Members
- Other Asset Owner Members

Members are appointed for one-year terms, generally in the spring, with a limit of three consecutive one-year terms. Current members of the U.S. Asset Owners Advisory Council are:

#### Public Funds

Tracy Harris (District of Columbia Retirement Board)  
 Thomas Lee (New York State Teachers' Retirement System)  
 Gianna McCarthy (New York State Common Retirement System)  
 Tom Robinson (State of Wisconsin Investment Board)  
 Jeffrey Warshauer (State of New Jersey Division of Investment)

#### Corporate Funds

Joseph Bolling (Equifax)  
 Laura O. Hewett (Southern Company)  
 Mark Preisinger (Coca-Cola)

#### Labor Funds

Jennifer Dodenhoff (International Brotherhood of Electrical Workers)  
 Jeffrey Dokho (UAW Staff Retirement Income Plan)  
 Jim Kane (National Education Association)  
 Jennifer O'Dell (LIUNA Staff and Affiliates Pension Fund)

Brandon Rees (AFL-CIO)

Other U.S. Asset Owner Member Funds

Laura Campos (Nathan Cummings Foundation)

Chloe Moss (Casey Family Programs)

Wendy Pulling (University of California Office of the CIO)

Alec Stais (Providence St. Joseph Health)

At the advisory council's June 18, 2021, meeting, Tracy Stewart, CII's new director of research, introduced herself to the newly appointed advisory council members. Ms. Stewart, who had been a corporate governance specialist at Florida State Board of Administration before joining CII's staff, discussed some research priorities she plans to explore, including a report on share lending.

Glenn Davis, CII's deputy director, briefed members on the Policies Committee's proposed revisions to CII policies on board and management succession, and thanked advisory council members for their input.

CII Executive Director Amy Borrus led a discussion with advisory council members about their experiences of virtual shareholder meetings during the 2021 proxy season. She also briefed the advisory council on plans for topics and speakers at CII's fall conference and upcoming member webinars and on CII advocacy priorities.

At the business meeting, Alec Stais will report on the U.S. Asset Owners Advisory Council meeting set for September 17, 2021.

## APPENDIX 10

### Corporate Governance Advisory Council Report

CII's [Corporate Governance Advisory Council](#) (CGAC) provides insight and advice to the CII board and staff on key developments in corporate governance and CII activities that promote effective corporate governance. The council also advises on ways to enhance the value of CII membership.

All of the members of the Corporate Governance Advisory Council are representatives of non-U.S. asset owner Associate Members or asset manager Associate Members. Catherine Winner, vice president, global head of stewardship, for Goldman Sachs Group, chairs the CGAC. Rosemary Lally is the staff liaison to the council.

In December, the CGAC met virtually to discuss a final Department of Labor rule amending the agency's investment duties regulation under ERISA, changes to executive compensation as a result of the pandemic and the solution for corporate disclosure of useful, comparable environmental information. At its next meeting, set for September 15, the advisory council plans to discuss securities lending, observations from the past proxy season, planned policy changes for the 2022 proxy season, any regulatory updates from the SEC on anticipated new disclosure requirements and the influence of special purpose acquisition companies (SPACs) on proxy voting decisions.

#### Corporate Governance Advisory Council Members

##### **Catherine Winner, Goldman Sachs Group, chair**

Lisa Beauvilain, Impax Asset Management

Ray Cameron, BlackRock

Sandra Carlisle, HSBC Global Asset Management

Davis Catlin, Sands Capital

Benjamin Colton, State Street Global Advisors

Sara Donaldson, Voya Investment Management

Kristin Drake, Dimensional Fund Advisors

Drew Hambly, Morgan Stanley Investment Management

Adam Kanzer, BNP Paribas Asset Management

Gwen LeBerre, Parametric

Diana Lee, AllianceBernstein

Dianne McKeever, Ides Capital Management



Caitlin McSherry, Neuberger Berman  
Adrienne Monley, Vanguard Group  
Catherine Moyer, Northern Trust Asset Management  
Kieran Murray, Baillie Gifford International  
Britt Sahi, Charles Schwab Investment Management  
Miekela Singh, Ontario Teachers' Pension Plan Board  
Geoffrey Sorbello, Elliott Investment Management  
Rosa van den Beemt, BMO Asset Management  
Jake Walko, Thornburg Investment Management  
Ted White, Legion Partners Asset Management  
Tim Youmans, Federated Hermes

## APPENDIX 11

### Markets Advisory Council Report

CII's [Markets Advisory Council](#) (MAC) provides insight and advice to the CII board and staff on legal, financial reporting and investment markets and trends, topics and potential speakers for CII meetings and webinars/podcasts. It also recommends current and future CII activities that promote CII's mission and enhance value of CII membership.

In January, the CII board appointed members of the Markets Advisory Council for 2021, and reappointed Karla Bos, associate partner, Aon, as chair (see roster below). Jeff Mahoney and Connor Garvey are CII staff liaisons to the MAC.

At the MAC meeting in June, individual MAC members presented and led discussions on:

- Proxy trends and key themes of 2021; and
- The SPAC surge and CII's response

At the upcoming September meeting, MAC members plan on continuing to discuss proxy trends and shareholder engagement. Specifically, members will discuss the 2021 proxy season, which was considered one of the most arduous for investors and issuers alike, and as we head into off-season engagement, the increasing questions about whether the current engagement model is effective.

At the business meeting, Connor Garvey will report on the MAC's September 16 meeting.

### Markets Advisory Council Members

#### **Karla Bos, Aon, chair**

Nathan Bear, Robbins Geller Rudman & Dowd

Barbara Berlin, PricewaterhouseCoopers

Peter Borkon, Bleichmar Fonti & Auld

Maureen Bujno, Deloitte

Sydney Carlock, Teneo Holdings

Darren Check, Kessler Topaz Meltzer & Check

Stephen Deane, CFA Institute

Adam Foulke, ISAF Management Company

Fred Fox, Kaplan Fox & Kilsheimer

Bruce Goldfarb, Okapi Partners  
Tom Jenkins, FTSE Russell  
Sheila Lewis, Segal Marco Advisors  
Bob McCormick, PJT Camberview  
Dennis McGowan, Center for Audit Quality  
Fassil Michael, ISS  
Daniel Oh, Morrow Sodali  
Zach Oleksiuk, Evercore Inc.  
John Ramsay, IEX Group  
Sherri Rossoff, Rock Creek Group  
Jonathan Salzberger, Innisfree M&A Incorporated  
Eric Shostal, Glass Lewis  
Jamie Smith, EY  
Pamela Snyder, S & P Global  
Noah Wortman, Omni Bridgeway

## BYLAWS

As amended by CII U.S. Asset Owners, October 24, 2018<sup>1</sup>

### ARTICLE 1 OFFICES AND AGENT

The Council of Institutional Investors (the “Council”) shall have a registered office and such other offices and a registered agent as required by the State of California Nonprofit Mutual Benefit Corporation Law (hereafter “Nonprofit Corporation Law”).

### ARTICLE 2 PURPOSES

The Council studies and addresses, on a non-partisan basis, investment issues and corporate governance issues—including ones impacting investor rights, investor protections and disclosure requirements—of importance to U.S. Asset Owners in the management of their assets. The Council adopts policies, but policies do not bind U.S. Asset Owners. The Council may engage in any lawful act or activity for which a corporation may be organized under the Nonprofit Corporation Law.

### ARTICLE 3 MEMBERSHIPS

The Council shall have one class of voting members consisting of U.S. Asset Owners. Only U.S. Asset Owners are considered “members” of the Council for purposes of the Nonprofit Corporation Law. The Council shall have one class of non-voting members consisting of Associate Members. Non-voting members do not have voting rights nor are otherwise considered “members” of the Council for purposes of the Nonprofit Corporation Law.

#### A. Voting Members

- (i) **U.S. Asset Owners.** Employee benefit plans, state or local agencies officially charged with investing public fund assets (such as state investment boards) and charitable tax-exempt foundations and endowments may join the Council as voting members (“U.S. Asset Owners”) subject to the following limitation: Private-sector employee benefit plans may not join as voting members if the plan or plan sponsor’s

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<sup>1</sup> The membership amended the bylaws most recently on October 24, 2018, and on March 1, 2017, the latter to simplify Article 8, Section C. This note, which is not a part of the bylaws, relates to the March 1, 2017, amendment, and calls attention to the Nonprofit Corporation Law requirement that an annual report, as described in Article 8, Section C, be provided to each U.S. Asset Owner Member of the Council no later than 120 days after the close of the fiscal year.

primary line of business includes providing financial, consulting, legal or other services to institutional investors.

- (ii) **Dues.** A qualified applicant will become a voting member upon payment of the annual dues set by the U.S. Asset Owners. Membership is for a calendar year. Dues may be prorated to the nearest quarter. U.S. Asset Owners may terminate membership at any time, but dues are not refundable.
- (iii) **Membership Representatives.** Each U.S. Asset Owner shall designate at least one Member Representative who will receive official communications from the Council. Unless a U.S. Asset Owner obtains a waiver from the Board of Directors, only a U.S. Asset Owner's, or a U.S. Asset Owner's plan sponsor's employees, directors and trustees may serve as Membership Representatives. A U.S. Asset Owner may change its Membership Representatives at any time upon notifying the Council. A U.S. Asset Owner may request that additional employees, directors or trustees receive Council mailings.
- (iv) **Membership Rights.** Each U.S. Asset Owner's Membership Representative has the privilege of the floor at U.S. Asset Owner business meetings, is eligible for election to the Board of Directors, and may serve in other Council positions. Each U.S. Asset Owner has one vote at Council business meetings and one vote in Constituency meetings and each U.S. Asset Owner is responsible for resolving any potential conflicts that might arise if more than one Membership Representative casts votes on behalf of the U.S. Asset Owner. Each U.S. Asset Owner may send its Membership Representatives and other employees, directors and trustees to Council conferences and to Council business meetings. Each U.S. Asset Owner Member may participate by proxy on all items submitted for consideration in advance of the Council's regular business meetings or special meetings. Proxies must be signed by a Membership Representative and received in the Council's offices by mail, facsimile or email no less than two (2) business days before the start of the scheduled regular business meeting or special meeting. U.S. Asset Owners may change their votes at U.S. Asset Owners' business meetings when they have previously submitted a proxy in advance of the meetings. A Membership Representative may not vote for, or submit the proxy of, another U.S. Asset Owner.
- (v) **Constituencies.** Each U.S. Asset Owner, except foundation and endowment members, will be classified as either a (a) Corporate, (b) Public, or (c) Labor member for purposes of electing the Board of Directors or for other actions for which Constituency voting is required.

Each Constituency will meet prior to each Council business meeting. Each Constituency will be responsible for electing a specified number of members of the Board of Directors.

**B. Nonvoting Members**

- (i) **Associate Members.** Any individual, incorporated entity, educational institution, association or other group interested in the work of the Council may become a non-voting Associate Member upon payment of an annual fee established by the voting Membership. The U.S. Asset Owners delegate to the Board of Directors responsibility for setting Associate Member annual fees. Associate Members participate on a calendar year basis. The Board of Directors may renew or decline an Associate's membership application if it would be in the Council's interest to do so. Associate Members may attend Council conferences and other educational forums by invitation of the U.S. Asset Ownership. Associate Members also receive Council newsletters.

**ARTICLE 4 MEMBER MEETINGS**

- A. Frequency and Location** The Council will hold two U.S. Asset Owners' business meetings annually. Each business meeting will be preceded by meetings of the Council's Constituencies. The Council may hold additional special meetings as the Board of Directors may fix. Meetings will be held in various places throughout the U.S., selected to promote member and speaker attendance and participation. The Council will contract with union hotels, conference centers and restaurants for its meeting needs. The Council may hold meetings in members' facilities or other venues, as appropriate.
- B. General Powers** The U.S. Asset Owners maintains ultimate authority for the affairs of the Council. The U.S. Asset Owners reserves to itself (i) the power to amend the Bylaws, (ii) the power to dissolve the organization, (iii) the right to approve the Council's annual budget and any changes or amendments to the budget exceeding ten (10) percent of total annual expenditures, (iv) the right to approve Council policies, and (v) the right to set membership dues and to change members' voting rights. The U.S. Asset Owners, through its Constituencies, elects the Board of Directors.
- C. Notice** Meeting dates for the Council's two annual business meetings should be set and communicated to U.S. Asset Owners at least a year prior to those meetings. Regular business meeting agendas are to be posted on the Council's Web site and communicated to members at least ten (10) business days and no

more than ninety (90) days prior to the meeting. Notice for special meetings of the Council's U.S. Asset Owners should be posted on the Council's Web site and communicated to U.S. Asset Owners as early as practical but no less than ten (10) days and no more than ninety (90) days before the meeting.

- D. Action by Written Ballot** Any action that may be taken at a Council business meeting may be taken without a meeting, without prior notice, if the action is submitted to U.S. Asset Owners by mail, facsimile or email with a sufficient explanation. The Board of Directors must approve the taking of action by written ballot. U.S. Asset Owners must be given not less than ten (10) business days to respond. All votes are confidential.
- E. Quorum and Majority Vote Requirement** A majority of the U.S. Asset Owners must be represented in person or by proxy at Council business meetings for the transaction of business or for action to be taken. The affirmative vote of a majority of those U.S. Asset Owners voting at business meetings or voting in an action by written ballot is required for an action item to be approved or adopted. All votes are confidential.

## **ARTICLE 5 BOARD OF DIRECTORS**

- A. Number and Makeup** The Board of Directors will consist of fifteen (15) members. Nine will be Membership Representatives of Public funds. One of these nine, who will serve as Chair of the Board, must be a full time staff member of a public fund. One public fund member of the Council's Board of Directors will serve as Treasurer. Another public fund board member will serve as Co-Chair. Four will be Membership Representatives of Labor funds, including one who will serve as Secretary and one who will serve as Co-Chair. Two will be Membership Representatives of Corporate funds including one who will serve as Co-Chair. The Chair of the Board, the Co-chairs, the Secretary and the Treasurer will collectively be known as the officers of the Board.
- B. Selection** Members of the Board of Directors will be elected by a vote of the members of their Constituency at each annual spring Council business meeting. (See Article 3.0 A (iv)). Each Constituency will decide for itself how to conduct its director elections. Director elections will include reasonable nomination and election procedures as determined by each Constituency. Each Constituency will specify which of its directors fills which of the positions open to it.
- C. Terms** Board members will serve one-year terms. If a board member resigns or ceases to represent a U.S. Asset Owner , that board member's Constituency can fill the vacancy for the remainder of the term in whatever manner the

Constituency prefers. No person can serve on the Board for more than five consecutive years.

**D. Quorum and Voting Requirements** A majority of each Council Constituency (but only half of any Constituency represented by only two members) or three quarters of the members (11), if each Constituency has at least one member present, in person constitutes a quorum. The affirmative vote of a majority of Board members present at any meeting at which a quorum is present shall constitute action by the Board of Directors.

**E. Rights and Responsibilities**

- (i) The full Board of Directors is responsible for the oversight of the operations of the Council. The Board may approve changes to the budget and recommend for membership approval any changes or amendments to the budget exceeding (ten) 10 percent of total annual expenditures. The Board approves the agenda for Council business meetings and reviews materials for Council business meetings before they are provided to U.S. Asset Owners. The Board will periodically propose strategic goals (based on input from member surveys) to the U.S. Asset Owners for review and adoption. The Board will develop a plan to implement the approved goals. Board members will act as liaisons to their respective Constituencies and make sure their views are heard in board discussions. The Board may establish and select the members for Council standing or ad hoc committees. The Board will approve minutes of Council U.S. Asset Owners business meetings. The Board is responsible for the hiring, annual evaluation, compensation and termination of the Executive Director. The Board may delegate this function to the officers if it chooses.
- (ii) The Non-Officer Board Members serve as the Council's Policies Committee, suggesting subjects for policies, reviewing staff policy drafts and deciding which proposed policies should be submitted to the full Board. The full Board will vote on whether to approve a proposed policy. If the Board approves a policy, it will submit it to the full U.S. Asset Owners for a vote at the next business meeting unless the Board decides that time is of the essence and a mail ballot needs to be used. The Policies Committee portion of the Board will meet at least on a quarterly basis for policy-related discussions.
- (iii) The Co-Chairs may sign and execute in the name of the Council, deeds, mortgages, bonds, contracts and other instruments, after obtaining any approvals required by these Bylaws.
- (iv) The Treasurer will receive monthly reports from the Council's financial staff. The Treasurer will oversee the preparation of the annual budget and



submit it to the full Board of Directors for approval to be submitted to the full U.S. Asset Owners. The Treasurer will receive the Council's audit and be responsible for Board communication with the Council's auditors. The Treasurer will recommend to the Board of Directors any changes he or she believes are in the Council's interest. The Treasurer will present the budget at the Council's annual fall business meeting and will present the audit at the Council's spring business meeting.

- (v) The Secretary will sign the Council's Bylaws and ensure that all notices required to be given by the Council are duly given and served.
- (vi) The Chair of the Board will chair meetings of the officers, the Board and the U.S. Asset Owners' business meetings. In the Chair's absence, the meetings will be chaired by the public fund Co-Chair.

**F. Board Meetings** The Board of Directors will meet at least quarterly. The Board may set any additional board meetings at the discretion of the Chair or a majority of the Board members. The meeting schedule will be provided in advance so members can arrange to be available for them. Absent extraordinary circumstances, Board members are expected to attend in person all Board meetings. Only elected Board members, not their representatives, may vote and be considered for purposes of constituting a quorum. When practical, the Board will publish the proposed agendas for board meetings on the Council's Web site in advance of the meetings.

**G. Teleconferencing** One or more directors may participate in a meeting by means of a conference telephone or similar communications equipment through which all directors participating in the meeting can speak to and hear each other at the same time. Participation by such means shall constitute presence in person at the meeting.

## **ARTICLE 6 EXECUTIVE DIRECTOR**

The Executive Director shall be the Council's chief executive and administrative officer. The Board is responsible for the hiring, annual evaluation, compensation and termination of the Executive Director. The Board may delegate this function to the officers if it chooses. Under the direction of the Board of Directors, the Executive Director will be responsible for the general supervision and management of the affairs of the Council. The Executive Director will retain and review staff and make staff compensation decisions within budgetary limits set by the Board of Directors. The Executive Director shall be an officer of the Council for purposes of Articles 7.0 and 8.0 of these Bylaws but shall not be a voting member of the Board of Directors.

## **ARTICLE 7 INDEMNIFICATION**

The Council shall, to the maximum extent permitted by applicable law, indemnify and hold harmless each current and former director, officer and employee of the Council and any person who is serving or served at the Council's request as a director or officer of another entity, whether for profit or not for profit, against any liability he or she may incur (including the advancement of reasonable expenses and attorneys' fees) in connection with any investigation, threatened action, suit, or proceeding in which he or she is made a party or otherwise involved by reason of his or her connection with the Council or the entity for which he or she served as a director or officer at the request of the Council, except in relation to matters as to which he or she is found to have violated applicable law in a final adjudication by a court of competent jurisdiction. Such indemnification and hold harmless shall be secondary to any other insurance or other indemnity or hold harmless by a third party that provides coverage for such amounts and shall not be deemed exclusive of any other rights to which each such individual may be entitled under any Bylaws, agreement, vote of the Board of Directors or otherwise.

## **ARTICLE 8 CONTRACTS, CHECKS, DRAFTS, BANK ACCOUNTS, GIFTS, ETC.**

- A. Contracts, Bank Accounts, Etc.** The Board of Directors may prospectively or retrospectively authorize any officer, employee or agent in the name and on behalf of the Council to enter into contracts, execute documents, open and close bank accounts and otherwise conduct Council business.
- B. Fiscal Year** The fiscal year shall be determined by resolution of the Board of Directors.
- C. Auditing of Books** The Board shall cause the accounts of the Council to be audited by a certified public accountant and an annual report, including a balance sheet as of the end of the fiscal year, an income statement (or the equivalent) for the fiscal year, and a statement of cash flows for the fiscal year, shall be submitted annually to each U.S. Asset Owner of the Council. The annual audited financial statements should be posted on the Council's web site.

## **ARTICLE 9 NOTICE**

All notices required by these Bylaws shall be printed or written and delivered in person, by mail, telegraph, telex, cable, facsimile or email. If mailed, notice shall be deemed to be delivered when deposited in the United States mail, postage prepaid addressed to the person entitled thereto at his or her address as it appears on the records of the

Council. Council U.S. Asset Owners must supply one or more email addresses at the time the member joins the Council, to which official notices and mail ballots can be sent.

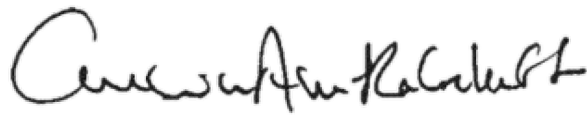
## **ARTICLE 10 AMENDMENTS**

These Bylaws may be altered, amended, supplemented or repealed by a two-thirds vote of the U.S. Asset Owners voting at a Council regular business meeting or special meeting or voting in action by written ballot, provided quorum requirements are satisfied.

*The undersigned Secretary of the Council of Institutional Investors hereby certifies that the foregoing is a true and correct copy of the Bylaws of the Council of Institutional Investors, adopted at a meeting of the U.S. Asset Ownership held on April 1, 2015.*

7/28/2020

\_\_\_\_\_  
DATE



\_\_\_\_\_  
Secretary

## **NEW BUSINESS**

- 7.C. Motion to grant Staff the authority to determine the retirement effective date as it relates to issuing the first retirement allowance payment.**



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MEMORANDUM TO THE BOARD OF RETIREMENT

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DATE: September 16, 2021

TO: Members of the Board of Retirement

FROM: Kathy Foster, Assistant Chief Executive Officer 

SUBJECT: **Retire Members for Service Pursuant to Government Code Section 31670(b)**

Staff currently provides an Appendix to the Board of Retirement (Board) on each Consent Calendar for the Board's formal approval of service retirements. Because the Board meets only once per month, this formality sometimes creates ambiguities regarding a member's status (retired, active, deferred), which can lead to administrative challenges and legal ambiguities. For example, challenges may arise when the member asks to rescind a retirement application or when ACERA is determining which death benefits are available to a member's beneficiaries (if the member dies before the Board formally approves the application). The date that a member is formally retired also can impact whether the member is subject to changes to ACERA's governing laws. *See Wilmot v. Contra Costa County Employees' Retirement* (2021) 60 Cal.App.5th 631 (felony forfeiture rules that were operative January 1, 2013 applied to a member who had an effective retirement date before January 1, 2013, but was not formally retired by the board until after January 1, 2013).

The Legislature recognized the above issues and, effective January 1, 2021, adopted Government Code Section 31670(b), which gives the Board authority to establish a different procedure for formally retiring members. Government Code Section 31670(b) provides: "The board may authorize the system administrator or other personnel to exercise the board's power and perform its duty to retire members under this section. The system administrator or other personnel shall report service retirements to the board at the next public meeting of the board after the retirement."

Staff recommends that the Board take advantage of Section 31670(b) to provide more clarity as to members' status. Staff recommends that formal retirement should occur **upon ACERA's issuance of the first retirement payment**, with Staff reporting each service retirement to the Board at its next meeting.

Recommendation

Staff recommends that the Board of Retirement authorize and direct ACERA staff to exercise the Board's power and perform the Board's duty to retire members as of the date ACERA issues the first retirement allowance payment, pursuant to Government Code Section 31670(b).

## **NEW BUSINESS**

**7.D. Chief Executive Officer's Report.**



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***Office of the Chief Executive Officer  
Office of Administration***

DATE: September 16, 2021  
TO: Members of the Board of Retirement  
FROM: Dave Nelsen, Chief Executive Officer *DN*  
SUBJECT: **Chief Executive Officer's Report**

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**Senior Manager Recruitment**

Assistant CEO for Operations: This is to fill the duties due to Margo's acceptance of the position at Sacramento CRS. I am talking with a recruitment firm to determine if we recruit through a firm or with the County.

**Committee/Board Action Items**

ASSIGNED FOLLOW-UP ITEMS				
Follow-Up Board Item	Assigned Senior Leader	Estimated Completion Date	Completion Date	Notes
Develop ACERA Re-Opening Plan.	Dave Nelsen	July 2021	On-going	The general guidelines of the Plan have been developed and implemented. We are responding to changes as necessary based on new information.

**Conference/Event Schedule**

None

**Other Items**

**COVID-19 Responses**

We continue to be open to customers by appointment on Tuesdays and Thursday, but have had very few appointments made since that time. We stress digital tools, web services, and phone/Zoom appointments to meet customer needs, and the overwhelming majority are still using those methods of interaction.

Given the low use of in-person interactions, we have scaled back the number of benefits team members coming on-site. The remainder of the team members continue to work their prior schedule, with most working from home. We will continue to promote virtual service delivery options as the primary means of meeting our customers' needs.

Given the rising spread of the Delta variant, we are considering altering this schedule, and returning to a fully virtual customer service environment. Many employers are reconsidering their plans in light of the current surge. Currently, the County has not made any changes to work site requirements regarding employee mask use and social distancing. These are still required in County work sites.

#### Pension Administration System Update

The project is continuing to work through its phases. We have completed the first two deliverables, and we are now working on Deliverable three.

Given the schedule delay due to the file layout and timing information from the County, we continue to try to find time as the project progresses, but it is unlikely we will be able to return to our original end date. We are now looking at later in 2024 as the final implementation of all elements of the new system.

#### Board Election

We are conducting an election for the vacant Seat 2 (General Member). The Nomination Period began August 30. Three packets have been provided to interested candidates. Completed Nomination Packets are due to ACERA by September 27<sup>th</sup>.

#### Legislation of Interest

AB 826: I discussed this bill at the last Board Meeting. It would have provided for earnable compensation exceptions to the court findings in the *DSA* case for certain CERL systems who had yet to implement the findings in the Supreme Court Decision. The bill was amended to only affect Ventura County, but we found out the morning of writing this memo that due to extensive opposition the bill will not pass the legislature in 2021.

AB 361: With the Governor lifting his suspension of *Brown Act* provisions related to virtual attendance at meetings effective 9/30/2021, this bill was amended to provide relief for public entities, including Local Government Boards to continue to meet virtually during times of declared states of emergency and when local health authorities have provided guidance to promote social distancing. It was also amended to add an emergency clause, and would be effective immediately upon signing by the Governor.



## **Key Performance Indicators**

Below are the high level performance indicators for ACERA, with the latest scores included:

<b>Scorecard KPI</b>	<b>2020 Performance Goal</b>
<b>PRUDENT INVESTMENT PRACTICES</b>	
<b>Portfolio Performance vs. Policy Benchmark</b>	<i>Annualized 10-year return will meet or exceed Policy benchmark at the total fund level Through July of 2021: .02% above the benchmark.</i>
<b>EFFECTIVE PLAN ADMINISTRATION</b>	
<b>Actual Spent vs. Approved Budget</b>	<i>On budget or 10% below 2021 approved budget As of end of July 2021: 15% under budget.</i>
<b>COMPREHENSIVE ORGANIZATION DEVELOPMENT</b>	
<b>Employee Engagement Survey Results</b>	<i>80% of responses in top two rating boxes on the question: "Is ACERA a great place to work?" As of last survey (Fall of 2020): 65%.</i>
<b>SUPERIOR CUSTOMER SERVICE</b>	
<b>Service Excellence Survey</b>	<i>80% of responses in top two rating boxes on the question: "Did ACERA meet or exceed my expectations for my customer service experience?" As of 2<sup>nd</sup> Quarter of 2021: 91%</i>

**12. CLOSED SESSION:**

- A. Existing Litigation pursuant to Government Code Section 54956.9(d)(1):**  
***Alameda Health System v. ACERA***, San Francisco County Superior Court, No. CGC-19-516795.
- B. Conference With Legal Counsel--Existing Litigation (Gov't Code § 54956.9(d)(1)):**  
***Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Association***, Contra Costa County Superior Court, Case No. MSN12-1870.

**IF THERE ARE ANY MATERIALS TO BE DISTRIBUTED FOR AGENDA ITEMS 12.A. and/or 12.B. ABOVE, THEY WILL BE DISTRIBUTED UNDER SEPARATE COVER.**