

**COURT OF APPEAL  
STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT**

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KAREN MATUS, Individually and in Various Representative Capacities as  
Trustee Executor, and Personal Representative; ALEXANDER FAMILY TRUST,  
*et al.*,

*Plaintiffs and Respondents*

v.

BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC  
EMPLOYEES' RETIREMENT SYSTEM, LEGISLATORS' RETIREMENT  
SYSTEM, and CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT  
SYSTEM itself and as Administrator of LEGISLATORS' RETIREMENT  
SYSTEM

*Defendants and Appellants*

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On Appeal from the Superior Court  
State of California for the County of Sacramento  
Honorable Jack Sapunor, Presiding Judge  
No. 06CS01759

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**RESPONDENTS' BRIEF**

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**CERTIFICATE OF INTERESTED ENTITIES OR PERSONS**  
**California Rules of Court, rules 8.208, 8.490(i), 8.494(c), 8.496(c), or 8.498(d)**

Court of Appeal Case Caption:

Karen Matus, Individually and in Various Representative Capacities as Trustee,  
Executor, and Personal Representative, Alexander Family Trust, et al.,  
Plaintiffs and Respondents

v.

Board of Administration of the California Public Employees' Retirement System,  
Legislators' Retirement System, and California Public Employees' Retirement System  
Itself and As Administrator of Legislators' Retirement System  
Defendants and Appellants

Court of Appeal Case Number: C056576

Please check here if applicable:

There are no interested entities or persons to list in this Certificate as defined in the  
California Rules of Court.

<b>Name of Interested Entity or Person</b>	<b>Nature of Interest</b>
1. Alexander Family Trust, Estate of Frances Alexander	Plaintiff and Respondent
2. Carl Alexander	Beneficiary of Alexander Trust
3. John Michael Jensen	Attorney Representing Plaintiff/ Respondent
4. Karen Matus	Plaintiff and Respondent
4. James Niehaus*	Consultant
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***ATTACH PROOF OF SERVICE ON ALL PARTIES WITH YOUR CERTIFICATE***

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## I. INTRODUCTION

Ignoring basic legal principles like stare decisis and the duty to interpret a statute according to its legislative intent, CalPERS seeks to overturn this Court's recent, well-reasoned, and un-contradicted precedent, *St. Francis Medical Center v. Shewry* (2005) 134 Cal.App.4th 1556, and replace it with the 'logic' and 'reasoning' of a poorly drafted, factually ambiguous, unpublished case in another district (that CalPERS cites in violation of *Cal. Rules of Ct.* 8.1115).

Well within the accepted mainstream, the *St. Francis* case correctly recognizes that *California Government Code*<sup>1</sup> Section 11517 (i) contains an explicit penalty or consequence for failing to timely make a final decision; (ii) interprets 'deemed adopted' as 'mandatory'; and (iii) requires a timely "final decision."

In granting the Writ in *Alexander/Matus v. CalPERS* (06CS01759)<sup>2</sup>, Judge Sapunor correctly relied on *St. Francis* and correctly interpreted Section 11517. Vol. 3 CT 785-794. There was no error.

Contrary to *St. Francis* and distorting basic rules of statutory construction, CalPERS argues that the first sentence of Section 11517(c)(2)(E)(iv) has no meaning; yet the first sentence is the most recently amended Subsection. Subsection 11517(c)(2)(E)(iv) contains a specific, mandatory deadline requiring

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<sup>1</sup> All future undesignated section references will be to the *California Government Code*.

<sup>2</sup> "*Karen Matus, individually and in various representative capacities as Trustee, Executor, and Personal Representative; Alexander Family Trust, et al Petitioners and Plaintiffs, v. Board of Administration of California Public Employees' Retirement System ("CalPERS"), California Public Employees' Retirement System ("CalPERS") itself and as administrator of Legislators' Retirement System ("LRS"), Respondents and Defendants* (06 CS 01759) .

an Agency to act, including render a final decision, within 100 days of rejecting the Proposed Decision. CalPERS failed to abide by this deadline and thus the *Proposed Decision* was “deemed adopted.”

In its selectively semantic and nonsensical interpretation, CalPERS argues that only the second sentence of Section 11517(c)(2)(E)(iv) matters: if a state agency initially rejects a Proposed Decision within 100 days, then subsequently the agency can delay indefinitely, even *unreasonably*, as long as the agency receives transcripts at least 100 days before it eventually makes a final decision at some unlimited time in the future.

In addition, CalPERS ignores or repudiates the third sentence of Section 11517(c)(2)(E)(iv) which explicitly limits delays to 30 days.

Turning Section 11517 on its head and rendering it meaningless, CalPERS’ improbable arguments negate the statute and provide innumerable incentives for gamesmanship, mischief, and rank injustice.

Confusing ministerial acts with substantive due process, CalPERS suggests that a state agency is only limited by a technicality, i.e. it must receive the transcripts 100 days before the date of some future “final” decision. This allows agencies to wield full settlement power by withholding the exhaustion of administrative appeals over already litigated decisions that the individual has won.

Extending CalPERS’ “logic” that the timing is discretionary, an agency’s post-rejection procedure is beyond a court’s oversight. A court will not issue a writ

to compel an agency to perform a discretionary act. *Code of Civil Procedure Section 1085*.

In reality, CalPERS wants the Court to grant all California state agencies the power to:

- (1) Intentionally avoid the explicit language of Section 11517(c)(2)(E);
- (2) Render the statutory time requirement to be discretionary and therefore meaningless (and contrary to the Legislative history);
- (3) Order the transcripts as late as they desire including to intentionally delay a hearing and a final decision;
- (4) Intentionally delay a hearing and a final decision as long as they want, even *unreasonably*, by delaying ordering the transcripts;
- (5) Avoid the described penalty of “deemed adoption” of the *Proposed Decision* on the 100<sup>th</sup> day after “initial rejection”;
- (6) Avoid ordering the transcripts within the first 100 days after rejecting the *Proposed Decision* with impunity;
- (7) Overturn the “deemed adoption” status of a *Proposed Decision* (perhaps at any time) by the mere subsequent ordering of transcripts;
- (8) Regain lost or lapsed jurisdiction simply by ordering the transcripts;
- (9) Bar litigants from gaining a Writ under *Code of Civil Procedure Section 1085* to compel agencies to order transcripts or make a final decision as CalPERS alleges that Section 11517 is “silent” on when to order transcripts;

(10) Make Section 11517's deadlines "discretionary" and without mandatory deadlines or acts that a Superior Court can compel;

(11) Introduce lengthy and uncertain hurdles to a litigant's ability to exhaust her administrative appeals;

(12) Greatly increase an agency's actual settlement power because an agency can delay without penalty;

(13) Place the timeliness or reasonableness of state agencies' adjudicative procedures beyond a higher court's oversight or control; and

(14) Hold a late hearing at any time (presumably for the sole purpose of rendering a contrary decision to the ALJ's *Proposed Decision*).

Factually, CalPERS initially rejected an intensely litigated, well reasoned, 40 page *Proposed Decision* by Administrative Law Judge Jonathan Lew on June 21, 2006.

Thereafter CalPERS *intentionally* delayed. Several times, CalPERS' attorneys called Peters Shorthand Reporting Company and learned that the Alexander transcripts were ready, waiting, and already paid for by Alexander. Vol. 2 CT 468-480. CalPERS' attorneys acknowledged the existence of the transcripts and receipt of minor Errata in a letter to Judge Lew. Vol. 1 CT 200-201. Yet still, CalPERS deliberately waited.

To attempt to bootstrap a delay in the hearing date, CalPERS' attorneys intentionally delayed a simple ministerial act: making a written order for a copy of

the transcript. However, CalPERS postponed beyond Section 11517's 100 day deadline. Vol. 2 CT 470, 471.

On or about December 8, 2006, or 170 days after rejecting, CalPERS for the first time sought a 60+ day extension under the third sentence of Section 11517(c)(2)(E)(iv) although this section only allows a 30 day extension. Vol. 1 CT 220-222. It was also the first time that CalPERS divulged that it was operating under Section 11517. Alexander filed for various *Petitions for Writ* four (4) days later.

On or about January 5, 2007, CalPERS sought to delay a final decision until March 14, 2007, which was 266 days after rejection and 314 days after receipt of the *Proposed Decision*. Vol. 2 CT 397; *Appellants' Brief* pg. 9.

On Feb 2, 2007, or 226 days after rejection, Judge Sapunor granted a Stay. Vol. 2 CT 502. On or about May 8<sup>th</sup> 2007, Judge Sapunor granted the Writ and ruled that CalPERS deemed adopted the *Proposed Decision*. Vol. 3 CT 796-797. CalPERS appealed to this Court.

Defying even common sense, CalPERS' interpretation of Section 11517 is contrary to the statute's statutory language, legislative intent, legislative history, and public policy.

Exacerbating instead of reducing "administrative limbo", CalPERS' arguments render the administrative process a never-ending quagmire, precludes timely exhaustion of administrative appeals, and in practice greatly reduces the chance of an administrative litigant ever reaching a fair or neutral legal forum.

CalPERS' attempts to sway this court with emotion should not stand. Judge Sapunor considered all the various facts that CalPERS alleges (the amount of award, the legislative counsel opinion, the method of ordering transcripts, etc.) and found that CalPERS acted *unreasonably*. Vol. 3 CT 805. Thus, CalPERS also even fails to satisfy the proffered "reasonableness" standard of its unpublished case.

CalPERS fails to raise or challenge Judge Sapunor's "unreasonableness" factual finding because it is strongly buttressed with substantial evidence in Alexander's favor.

Judge Sapunor's Writ of Mandate ruling that the *Proposed Decision* in Alexander was deemed adopted is correct and should stand.

## **II. STATEMENT OF THE CASE**

CalPERS challenges the trial court's grant of a *Writ of Mandate* that orders CalPERS to adopt the *Proposed Decision* pursuant to Section 11517. The trial court *correctly* based its Ruling on: (i) at least two statutory grounds and on (ii) the recent *St. Francis* precedent. Alternatively, the Court made factual findings that CalPERS *unreasonably* delayed.

## **III. STATEMENT OF FACTS**

CalPERS failed to mention the following facts in its Appeal:

1) In 1991, Harvey Robinson the head of Legislators' Retirement System, a pension fund administered by CalPERS, wrote a memo recognizing and seeking guidance from senior CalPERS staff regarding CalPERS' miscalculation that

underpaid Clarence Alexander's pension by \$463,658.03 since 1980. CalPERS did not inform either Clarence Alexander, or his wife, Frances Alexander. Vol. 1 CT 262. ATTACHMENT 1.

2) In 1995, Michael Priebe, the head of Legislators' Retirement System, wrote a memo recognizing that CalPERS underpaid Clarence Alexander \$988,514.31 since 1980. Priebe's memo admitted that the Alexanders were "unaware." No one informed Alexander. Vol. 1 CT 264. ATTACHMENT 2.

3) Clarence Alexander died on Feb. 2, 1998. He maintained the continuing pension benefit to his widow, Mrs. Frances Alexander, by virtue of an Option 2 designation. *Respondent Frances Alexander's Trial Brief*, April 2005 pg. 38 FN 36.

4) On approximately October 14, 2003, a former CalPERS employee and whistleblower informed ninety-year old Mrs. Frances Alexander ("Alexander") that CalPERS had underpaid the pension since 1979. It was the first time that Alexander learned that there was a potential issue with her pension. Vol 1. CT 266-282.

5) Shortly thereafter, Alexander requested a review by CalPERS. Vol 1. CT 266-282.

6) Although CalPERS' own internal memos indicated about one million dollars (\$988, 514.31) were due (Vol.1 CT 264), CalPERS told Alexander that she was *overpaid* by \$100,000. CalPERS further told Mrs. Alexander that if she

immediately signed a release of any and all future claims against CalPERS, CalPERS would not seek a return of the alleged overpaid benefits. Vol. 1 CT 284.

7) On September 22, 2004, Alexander's counsel timely filed a 97 page administrative appeal. Exhibit 5 of CalPERS' pleadings, labeled "U", Blue Folder of Redbook Folder 2, Box 1 of 2, *Administrative Record ("AR")*.

8) Seven months later, CalPERS filed a *Statement of Issues*, really an *Accusation*, seeking a \$191,274.48 repayment from the 90 year old widow. Vol. 1 CT 127-136.

9) An initial Hearing was scheduled for June 22, 2005. Vol. 1 CT 127.

10) CalPERS subsequently delayed several times. Exhibits 3, 6 of CalPERS' pleadings, labeled "U", Blue Folder of Redbook Folder 2, Box 1 of 2, *AR*.

11) Several motion hearings, one previous Writ hearing (05CS01338) in October 21, 2005, and an extensive briefing occurred in the administrative matter. Exhibits 6, 7, 8, 9 of CalPERS' pleadings, labeled "U", Blue Folder; Exhibits A-T Redbook Folder 2, Box 1 of 2, *AR*. Alexander's Pleadings and EXHIBITS 1-138, Box 2 of 2, *AR*.

12) On Nov. 23, 2005, Judge Lew rendered a comprehensive 20 page *Advanced Ruling on the Law* in Alexander's favor. Exhibit 7 of CalPERS' pleadings, labeled "U", Blue Folder; Redbook Folder 2, Box 1 of 2, *AR*. CalPERS did not timely dispute it, and failed to assert any defenses.

13) On February 27 through March 1, 2006, Alexander and CalPERS had a contentious three day evidentiary hearing before Judge Lew (OAH No. N2005040366). Judge Lew received from Alexander written evidence spanning over 138 Exhibits and over 500 pages of pleadings that filled 2 bankers' boxes. Pleadings and EXHIBITS 1-138, A-U, Boxes 1 and 2, AR.

14) As documented in the *Proposed Decision*, both CalPERS' expert (actuary Alan Milligan) and Alexander's expert (Tom Collins CPA) agreed that "as of December 2005, about \$6,425,000 is due Respondent [Alexander] if interest is charged at seven percent. Respondent calculates \$6,424,907. CalPERS calculates the amount to be \$6,425,066, an amount that is comprised of \$3,579,578 in principal, and \$2,845,488 in interest. The estimates by respondent and CalPERS differ by only \$159, or about .002 percent." Vol. 1 CT 175.

15) After the close of the hearing on March 1, 2006, Judge Lew signed and provided counsel with "*Office of Administrative Hearings Court Reporter Information and Billing Detail*" which reads:

**Notice to Parties: Retain this form for transcript ordering.  
Contact the Court Reporting Firm listed below to order a  
transcript of the hearing....**

Court Reporting Firm: Peters Shorthand Reporting OAH Contract  
#3075483

Court Reporting Firm Telephone Number: (916) 362-2345.

Vol. 3 CT 605. ATTACHMENT 8.

16) On May 2, 2006 Judge Lew rendered his comprehensive and correct 40 page *Proposed Decision* in Case No 6594, OAH No.N2005040366, in favor of Alexander<sup>3</sup>. Vol. 1 CT 139-178.

17) On May 4, 2006, CalPERS received the *Proposed Decision*. Vol. 1 CT 139.

18) On or about May 23, 2006, Alexander ordered transcripts and paid approximately \$3,400.00 to Peters Shorthand Reporting, the Court reporter for the administrative hearing. Vol. 1 CT 180-183.

19) Prior to the June 21, 2006 decision by the CalPERS Board, Alexander's counsel presented a six page *Respondent's Argument* containing the incriminating 1991 and 1995 CalPERS Memos. *Respondent's Argument* (May 26, 2006), Attachment B to Agenda Item 16D of June 21, 2006 CalPERS Board of Administration Meeting agenda, in Redbook Folder 1, Box 1 of 2, *AR*.

20) At the June 21, 2006 CalPERS Board Meeting, Acting Board Member Aronsberg asked CalPERS General Counsel Mixon for "the approximate time frame when there will be a full hearing" on Alexander, agenda item 16A. Vol. 1 CT 213-215. ATTACHMENT 6.

21) Mixon answered, "...the process would be that we notify the Office of Administrative Hearings to prepare what's called the administrative record, which would be a recording of the proceedings that occurred at the hearing,

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<sup>3</sup> *In the Matter of Calculation of Benefits Payable Upon the Death of Clarence Alexander* (2006) Administrative Law Judge Board of Administration California Public Employees' Retirement System. Proposed Decision. Case No. 6594 OAH No. N2005040366 (subsequently referred to as "*Proposed Decision*").

including the transcripts and exhibits. Once that is prepared, then an appropriate notice would be given for a full Board hearing, and a hearing would proceed according to Board procedures.” Vol. 1 CT 213-215. ATTACHMENT 6.

22) CalPERS Board President Feckner requested in open session an independent legal opinion on the Alexander matter from the California state agency, Office Of Legislative Counsel (OLC). Vol. 1 CT 215-216.

23) On June 21, 2006, after that discussion, the CalPERS Board initially rejected Judge Lew’s *Proposed Decision* and opted for a “full board” hearing before a public audience. Vol. 1 CT 213-214.

24) On June 23, 2006, Alexander’s counsel provided each CalPERS Board Member with a prior 1998 Office of Legislative Counsel Opinion #5606 on the same code sections that unequivocally supported Alexander and was nearly dispositive of the Alexander issues.<sup>4</sup>

25) Suspended in administrative limbo after June 21, 2006, Alexander had not yet exhausted her administrative appeals. CalPERS retained jurisdiction to hold a hearing and make a final decision.

26) On June 28, 2006, to July 3, 2006, Peters Shorthand provided Alexander’s counsel with transcripts for Feb. 28 - March 1 hearing. Vol. 2 CT 444-455; Vol. 1 CT 182-183.

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<sup>4</sup> The 1998 OLC Opinion #5606 was also offered but not admitted at the Writ hearing. It is not currently in the Record.

27) On July 5, 2006, Alexander's counsel requested CalPERS' procedures and stated counsel's belief that the "full hearing" was scheduled on or before August 16, 2006. Vol. 1 CT 191.

28) On July 10, 2006, Alexander served minor ERRATA to the transcripts on CalPERS counsel Yelland and Judge Lew. Vol. 1 CT 193-194 and Vol. 1 CT 244-252.

29) On July 18, 2006, CalPERS Legal Office Secretary, Jocelyn, contacted Peters Shorthand. CalPERS' contacts obviously show that CalPERS knew to contact Peters. Peters Shorthand Business Records<sup>5</sup> reads:

7/18/06 ph # 795-3726 1:15  
Joselyn from CALPERS legal  
wants to know if transcript(s)  
for Frances Alexander have  
been ordered for the following  
dates  
2/27, 2/28, 3/1, 3/2, 3/3  
if not how long would it take?  
Told her had already  
Been done, if want cc  
Need it in writing

Vol. 2 CT 470; ATTACHMENT 3.

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<sup>5</sup> After filing the *Petition for Writs*, Alexander subpoenaed the Business Records of the Court Reporter in the administrative hearing, Peters Shorthand. Peters Shorthand delivered the records under seal to Sacramento Superior Court. The Records were admitted as Vol. 2 CT 438-481 without objection.

30) On July 31, 2006, CalPERS attorney Elizabeth Yelland contacted Peters Shorthand again and inquired whether Peters already mailed the transcripts to “Roberti & Jensen,” counsel for Alexander:

“Karen  
7/31 at 4:25

Elizabeth Yelland  
(CalPERS)

2/27, 28/06 3/1/06  
Frances Alexander

When were they mailed  
to opposing counsel?  
Roberti & Jensen  
Please leave V.M.  
#795-3549

Per Karen  
Approx Date  
1<sup>st</sup> 2 Volumes  
Firm Del Sat July 1<sup>st</sup> 5906  
LMovm 8/1/06  
3<sup>rd</sup> Vol July 5<sup>th</sup> 5907  
3:43 p.m. 5909  
with this info

When was order  
placed? – 1st part of June

Vol. 2 CT 471. ATTACHMENT 4.

31) On August 3, 2006, CalPERS counsel Yelland wrote Judge Lew acknowledging the existence of the Alexander transcripts and Errata. Vol. 1 CT 200-201.

32) On August 16, 2006, Judge Lew responded that he did not have the authority to correct the errors in the transcripts. Vol. 1 CT 203.

33) Between July 19, 2006, and December 8, 2006, Alexander's counsel made numerous telephone inquiries regarding the "full hearing" to CalPERS' Legal Office without receiving any definitive responses and often not receiving any response at all.

34) Between May and October 2006, CalPERS' Legal Office and analysts invented new calculations and attempted to have the Office of Legislative Counsel render a new Opinion based on this new evidence. Vol. 2 CT 315- 324.

35) Since the calculations were new, Alexander's counsel opposed CalPERS' prejudicial attempt to add evidence or testimony to a closed administrative record. Vol. 2 CT 335-337.

36) September 29, 2006, was the 100<sup>th</sup> day after the June 21, 2006 CalPERS Board Meeting where the Board initially rejected Judge Lew's *Proposed Decision*. Vol. 1 CT 213-214.

37) On or before September 29, 2006, CalPERS had not rendered a final decision.

38) On or before September 29, 2006, CalPERS failed to "have ordered" the transcripts.

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39) After September 29, 2006, the *Proposed Decision* was deemed adopted as 100 days had passed since CalPERS rejected the *Proposed Decision*. This “deemed adopted” ruling was supported by *St. Francis*’ decision and Section 11517(c)(2)(E)(iv). Vol. 3 CT 807.

40) On October 20, 2006, or 20 days after Section 11517’s deadline, CalPERS’ Barbara Lipnosky again contacted Peters Shorthand. However, she intentionally failed to order the transcripts, waiting to time the delivery, evidently with a desire to have the transcripts arrive 100 days before the Feb 22, 2007 CalPERS Board meeting. Vol. 2 CT 468.

41) Calling and not ordering the prepared transcripts clearly shows that CalPERS intentionally gamed the delivery to allow CalPERS to argue that it made a final decision within 100 days of receipt.

42) 37 days passed from September 30, 2006 to November 6, 2006, where the *Proposed Decision* in Alexander was deemed adopted before CalPERS officially “ordered” the Transcripts from Peters Shorthand. Vol. 1 CT 218.

43) On November 6, 2006, CalPERS’ Legal Secretary, Barbara Lipnosky, putatively filed a formal written “Request for Transcripts” with Peters Court Reporting. Vol. 1 CT 218.

44) Even then, CalPERS’ order was timed pursuant to a requested delivery date of November 15, 2006. Vol. 2 CT 468.

45) “100 days” after November 15, 2006 is February 23, 2007, one day after CalPERS’ Board of Administration’s scheduled hearing on Feb 22, 2007.

46) On or about November 11, 2006, Peters Shorthand Records indicate that Barbara from PERS called saying CalPERS has the “exhibits if reporter needs them,” and left a voice mail that “she will send letter.” Vol. 2 CT 469.

ATTACHMENT 5.

47) Forty-four (44) days passed between the date of the “deemed adoption” of the *Proposed Decision* by operation of law and the date that CalPERS claims to have received the transcripts. Vol. 1 CT 221.

48) On or about November 13, 2006<sup>6</sup>, based on statements from Marguerite Seabourn, CalPERS received the transcripts from Peters. Vol. 2 CT 310; Vol. 1 CT 220-222.

49) Even by November 20, 2006, CalPERS had not made a final decision. November 20, 2006 was 200 days after Judge Lew served his decision and the last possible day for CalPERS to make a “final decision” under the most extended reading of the 200 day rule in *St. Francis Medical Center v. Shewry* (2005) 134 Cal.App.4th 1556.

50) State Senator Jack Scott received an independent legal opinion from the Office of Legislative Counsel’s Fred Messerer that conclusively supported Judge Lew’s *Proposed Decision* and Alexander. Vol. 1 RT 36:13-37:18.

51) Although told of the existence of the requested opinion, CalPERS’ Legal Office never contacted OLC or Messerer. CalPERS’ legal office never

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<sup>6</sup> For CalPERS’ improper purposes, the transcripts arrived two days too early. Since the transcripts arrived 102 days prior to Feb 22, 2007, CalPERS was required (i) to disclose to Alexander the authority under which they were delaying and (ii) seek a further delay under the third sentence of Section 11517.

received and never transmitted the independent OLC opinion requested by their own Board President. Vol. 1 RT 37:8-18.

52) CalPERS' Legal Counsel's failure to contact OLC demonstrates CalPERS' prejudice contrary to their *Clancy*<sup>7</sup> duties to remain neutral.

53) On or about December 8, 2006, CalPERS posted agenda item #18 for their December 20, 2006 meeting requesting a delay in the Alexander hearing under Section 11517(c)(2)(E)(iv). Vol. 1 CT 205-206. ATTACHMENT 7.

54) The agenda was the first notice that CalPERS was proceeding under Section 11517(c)(2)(E)(iv). Vol. 1 CT 205-206. CalPERS sought more than 60 days delay in violation of the third sentence of Section 11517(c)(2)(E)(iv).

55) On December 12, 2006, or four (4) days after CalPERS posted its December 20<sup>th</sup> agenda, Alexander filed the *Petition for Writ of Administrative Mandamus, Writ of Mandate and other Extraordinary Relief* in Superior Court, County of Sacramento. Vol. 1 RT 4:19.

56) On December 14<sup>th</sup> and 18<sup>th</sup>, 2006, Alexander faxed and mailed to CalPERS a notice of non-agreement and non-acquiescence to any extension or delay, referred to the served *Petition for Writ of Administrative Mandamus, Writ of Mandate, and Other Extraordinary Relief*. Vol. 1 CT 224-226.

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<sup>7</sup> *Clancy* duties apply to government lawyer in civil action or administrative proceeding as well as to criminal prosecutors. *People ex rel. Clancy v. Superior Court* (1985) 39 Cal.3d 740. See ABA Code of Prof.Resp., EC7-13, EC7-14, EC9-1, EC9-2.

