

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

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

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

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.

Name of Interested Entity or Person	Nature of Interest
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

Approved for Optional Use Within the Third Appellate District. 01/01/2007

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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(2005) 134 Cal.App.4th 1556, and replace it with the 'logic' and 'reasoning' of a poorly drafted, factually ambiguous, unpublished case in another district (that CalPERS cites in violation of *Cal.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*¹ 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)², 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

¹ All future undesignated section references will be to the *California Government Code*.

² "*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 100th 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;

