

## Executive Team

**Dominic D. Brown, CPA, CFE**  
Chief Executive Officer

**Daryn Miller, CFA**  
Chief Investment Officer

**Jennifer Zahry, JD**  
Chief Legal Officer

**Matthew Henry, CFE**  
Chief Operations Officer



## Board of Retirement

Tyler Whitezell, Chair  
Phil Franey, Vice-Chair  
Jeanine Adams  
David Couch  
Juan Gonzalez  
Joseph D. Hughes  
Jordan Kaufman  
Rick Kratt  
Dustin Contreras, Alternate  
Chase Nunneley, Alternate  
Robb Seibly, Alternate  
6th Member (Vacant)

March 2, 2023

Members, Board of Retirement  
Employee Bargaining Units  
Requesting News Media  
Other Interested Parties

Subject: Meeting of the Kern County Employees' Retirement Association  
Board of Retirement

Ladies and Gentlemen:

A meeting of the Kern County Employees' Retirement Association Board of Retirement will be held on Wednesday, March 8, 2023 at 8:30 a.m. in the KCERA Boardroom, 11125 River Run Boulevard, Bakersfield, California, 93311.

### **How to Participate: Listen to or View the Board Meeting**

To listen to the live audio of the Board meeting, please dial one of the following numbers (*landline recommended for best audio*) and enter ID# 830-5882-8040:

- (669) 900-9128; U.S. Toll-free: (888) 788-0099 or (877) 853-5247

To access live audio and video of the Board meeting, please use the following:

- <https://us02web.zoom.us/j/83058828040?pwd=anZyQkJKSFI5aDRPaXZvSVUwd0FSQT09>
- Passcode: 177914

Items of business will be limited to the matters shown on the attached agenda. If you have any questions or require additional service, please contact KCERA at (661) 381-7700 or send an email to [administration@kcera.org](mailto:administration@kcera.org).

Sincerely,

Dominic D. Brown  
Chief Executive Officer

Attachment

**AGENDA:**

All agenda item supporting documentation is available for public review on KCERA's website at [www.kcera.org](http://www.kcera.org) following the posting of the agenda. Any supporting documentation that relates to an agenda item for an open session of any regular meeting that is distributed after the agenda is posted and prior to the meeting will also be available for review at the same location.

**AMERICANS WITH DISABILITIES ACT  
(Government Code §54953.2)**

Disabled individuals who need special assistance to listen to and/or participate in the teleconference meeting of the Board of Retirement may request assistance by calling (661) 381-7700 or sending an email to [administration@kcera.org](mailto:administration@kcera.org). Every effort will be made to reasonably accommodate individuals with disabilities by making meeting materials and access available in alternative formats. Requests for assistance should be made at least two (2) days in advance of a meeting whenever possible.

**CALL TO ORDER**

**ROLL CALL (IN PERSON)**

**SALUTE TO FLAG**

**MOMENT OF SILENCE**

**AB 2449 REMOTE APPEARANCE(S)**

**1. JUST CAUSE CIRCUMSTANCE(S):**

a) The following Trustee(s) have notified the Board of a "Just Cause" to attend this meeting via teleconference. (See Government Code § 54953).

- NONE

b) Call for Trustee(s) who wish to notify the Board of a "Just Cause" to attend this meeting via teleconference. (See Government Code § 54953).

**2. EMERGENCY CIRCUMSTANCE(S):**

a) The following Trustee(s) have requested the Board approve their attendance of this meeting via teleconference due to an "Emergency Circumstance." (See Government Code § 54953).

- NONE

- b) Call for Trustee(s) requesting the Board approve their attendance of this meeting via teleconference due to an “Emergency Circumstance”. (See Government Code § 54953).

TAKE ACTION ON REQUEST(S) FOR REMOTE APPEARANCE

**CONSENT MATTERS**

ALL ITEMS LISTED WITH AN ASTERISK (\*) ARE CONSIDERED TO BE ROUTINE AND NON-CONTROVERSIAL BY STAFF AND WILL BE APPROVED BY ONE MOTION IF NO MEMBER OF THE BOARD OR PUBLIC WISHES TO COMMENT OR ASK QUESTIONS. IF COMMENT OR DISCUSSION IS DESIRED BY ANYONE, THE ITEM WILL BE REMOVED FROM THE CONSENT AGENDA AND WILL BE CONSIDERED IN THE LISTED SEQUENCE WITH AN OPPORTUNITY FOR ANY MEMBER OF THE PUBLIC TO ADDRESS THE BOARD CONCERNING THE ITEM BEFORE ACTION IS TAKEN. STAFF RECOMMENDATIONS ARE SHOWN IN CAPS AFTER EACH ITEM.

- \*3. Application for service-connected disability pension benefits for John Coletti, Sheriff (Safety) – ADOPT RECOMMENDATION OF SDAG TO GRANT SERVICE-CONNECTED DISABILITY PENSION
- \*4. [Fifth Appellate District Court Opinion Affirming Trial Court Order Denying Petition for Writ of Mandate: Gloria Morgan, Sheriff \(General\)](#) – RECEIVE AND FILE
- \*5. [Summary of proceedings of the following meetings:](#)
- February 8, 2023 Board of Retirement
- RECEIVE AND FILE
- \*6. [Report from the KCERA office on members retired from service for the month of February 2023](#) – RATIFY
- \*7. [Report from the KCERA office on deceased retirees for the month of February 2023](#) – RECEIVE AND FILE
- \*8. [Report of current disability retirement applications and appeals of KCERA Board decisions for the period ending February 28, 2023](#) – RECEIVE AND FILE
- \*9. [Securities Lending Earnings Summary Report for the period ending January 31, 2023 from Deutsche Bank](#) – RECEIVE AND FILE
- \*10. [KCERA asset allocation, cash flow position, investment fees cash flow, and operating expense budget status reports for the month of January 2023](#) – RECEIVE AND FILE

- \*11. [Invitation for trustees to attend the 2023 California Association of Public Retirement Systems \(CALAPRS\) Advanced Principles of Pension Governance for Trustees, March 29-31, 2023 in Los Angeles, CA – APPROVE THE ATTENDANCE OF TRUSTEES DUSTIN CONTRERAS AND TYLER WHITEZELL](#)
- \*12. [Invitation from State Association of County Retirement Systems \(SACRS\) to Board of Directors to attend the SACRS Board of Directors Meeting March 20-21, 2023, in Sacramento, CA – APPROVE ATTENDANCE OF TRUSTEE JORDAN KAUFMAN](#)
- \*13. [Service provider evaluation period initiated pursuant to Evaluation Period Policy – RATIFY](#)
- \*14. [Report on Special Pay Codes classified by the Chief Executive Officer – RECEIVE AND FILE](#)

### **PUBLIC COMMENTS**

- 15. The public is provided the opportunity to comment on agenda items at the time those agenda items are discussed by the Board. This portion of the meeting is reserved for persons to address the Board on any matter not on this agenda but under the jurisdiction of the Board. Board members may respond briefly to statements made or questions posed. They may ask a question for clarification and, through the Chair, make a referral to staff for factual information or request staff to report back to the Board at a later meeting. Speakers are limited to two minutes. Please state your name for the record prior to making a presentation.

### **INVESTMENT MATTERS**

- 16. [Discussion and appropriate action on private market fund recommendation](#) presented by Mark Mallory, Associate Investment Director, Cambridge Associates<sup>1</sup>, Chief Investment Officer Daryn Miller, CFA, and the Investment Committee – APPROVE UP TO \$30MM COMMITMENT TO LGT CROWN GLOBAL SECONDARIES VI; AUTHORIZE CHIEF EXECUTIVE OFFICER TO SIGN, SUBJECT TO LEGAL ADVICE AND REVIEW
- 17. [Discussion and appropriate action on private market fund recommendation](#) presented by Keirsten Lawton, Investment Managing Director, Cambridge Associates<sup>2</sup>, Chief Investment Officer Daryn Miller, CFA, and the Investment Committee – APPROVE UP TO \$30MM COMMITMENT TO PARTHENON INVESTORS VII; AUTHORIZE CHIEF EXECUTIVE OFFICER TO SIGN, SUBJECT TO LEGAL ADVICE AND REVIEW

<sup>1</sup> Written materials and investment recommendations from the consultants, fund managers and KCERA investment staff relating to alternative investments are exempt from public disclosure pursuant to California Government Code § 7928.710, § 7922.000, and §54957.5.

<sup>2</sup> Written materials and investment recommendations from the consultants, fund managers and KCERA investment staff relating to alternative investments are exempt from public disclosure pursuant to California Government Code § 7928.710, § 7922.000, and §54957.5.

18. [Response to referral and Trustee education regarding fiduciary duties with emphasis on investment considerations, including evaluation of ESG \(Environmental, Social, and Governance\) factors presented by Fiduciary Counsel Maytak Chin, Partner, and Harvey L. Leiderman, Partner, Reed Smith LLP – RECEIVE EDUCATIONAL TRAINING \(40 MINUTES TRUSTEE EDUCATION CREDIT\)](#)
19. [Response to referral and Trustee Education regarding Proxy Voting presented by Matt Seufert and Seth May-Patterson, Glass Lewis – RECEIVE EDUCATIONAL TRAINING \(15 MINUTES TRUSTEE EDUCATION CREDIT\)](#)

### **ADMINISTRATIVE MATTERS**

20. [Discussion and review of the 2023-2024 Chief Executive Officer Performance Evaluation Criteria presented by Chief Executive Officer Dominic Brown and the Administrative Committee – APPROVE THE CHIEF EXECUTIVE OFFICER PERFORMANCE EVALUATION CRITERIA FOR EVALUATION PERIOD OF 2023-2024](#)

### **STAFF REPORTS**

21. [Report from Chief Executive Officer](#)
22. [Report from Chief Investment Officer](#)
23. [Report from Chief Legal Officer and Trustee education regarding case review – RECEIVE EDUCATIONAL TRAINING \(10 MINUTES TRUSTEE EDUCATION CREDIT\)](#)

### **COMMITTEE REPORTS**

24. Report from Committee Chairs:
  - a. Administrative Committee: Gonzalez
  - b. Finance Committee: Contreras
  - c. Investment Committee: Kratt
  - d. KCERA Property, Inc. Board: Kratt

### **CALL FOR PUBLIC COMMENT ON EXECUTIVE SESSION ITEM(S)**

### **EXECUTIVE SESSION**

*Item 3 is withdrawn from Executive Session if approved on the consent agenda:*

3. PUBLIC EMPLOYMENT (pursuant to Government Code §54957) Application for service-connected disability pension benefits:

John Coletti

Sheriff

Safety

25. PUBLIC EMPLOYEE PERFORMANCE EVALUATION (pursuant to GOVERNMENT CODE §54957): Title: Chief Executive Officer
26. CONFERENCE WITH LABOR NEGOTIATORS REGARDING UNREPRESENTED EMPLOYEE (pursuant to Government Code §54957.6(a))

Agency Designated Representatives: Juan Gonzalez and Joseph D. Hughes;  
Unrepresented Employee: Chief Executive Officer

## **RETURN TO PUBLIC SESSION**

### **ROLL CALL**

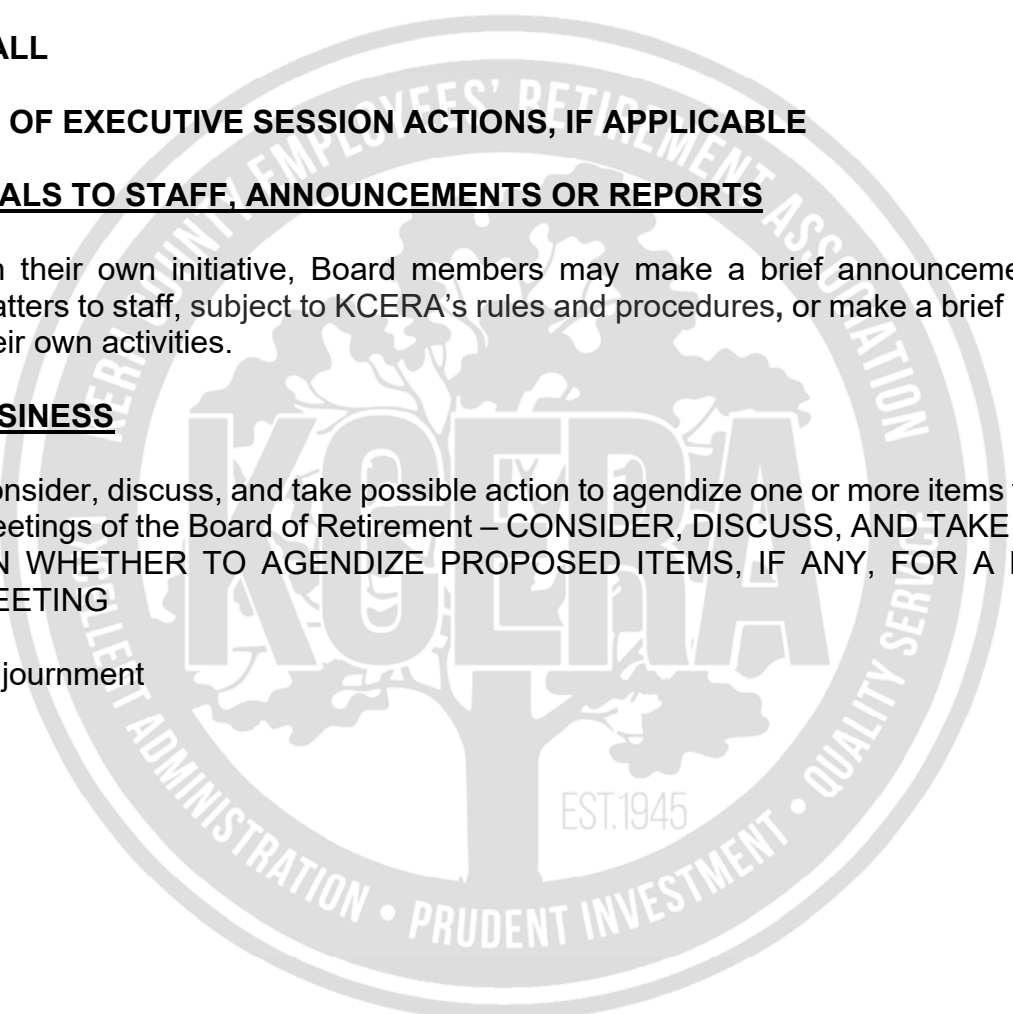
### **REPORT OF EXECUTIVE SESSION ACTIONS, IF APPLICABLE**

### **REFERRALS TO STAFF, ANNOUNCEMENTS OR REPORTS**

27. On their own initiative, Board members may make a brief announcement, refer matters to staff, subject to KCERA's rules and procedures, or make a brief report on their own activities.

### **NEW BUSINESS**

28. Consider, discuss, and take possible action to agendize one or more items for future meetings of the Board of Retirement – CONSIDER, DISCUSS, AND TAKE ACTION ON WHETHER TO AGENDIZE PROPOSED ITEMS, IF ANY, FOR A FUTURE MEETING
29. Adjournment





**Date:** March 8, 2023

**To:** Trustees, Board of Retirement

**From:** Jennifer Esquivel Zahry, Chief Legal Officer  
Phillip Jenkins, Deputy Chief Legal Officer

**Subject:** **Appellate Opinion Affirming Trial Court Order Denying Petition for Writ of Mandate**

### **Status**

The service-connected disability application of Gloria Morgan comes before this Board today following a ruling by California's Court of Appeal for the Fifth Appellate District. SDAG initially reviewed the matter in May 2018 and based on recommendation of the Medical Advisor, recommended the application be denied. Ms. Morgan requested and received an administrative hearing. The Hearing Officer submitted Proposed Findings of Fact, Conclusions of Law and Recommended Decision to deny the application. On August 14, 2019, your Board adopted the Hearing Officer's Recommended Decision to deny service-connected disability retirement.

Ms. Morgan filed a Petition for Writ of Mandate on November 6, 2019 in the Kern County Superior Court challenging your Board's decision. On July 8, 2021, the trial court issued an Order denying Ms. Morgan's Petition. Ms. Morgan challenged the trial court's ruling on the basis that your Board's decision was not supported by substantial evidence. Specifically, Ms. Morgan argued that the opinion issued by the Board's medical advisor could not be considered substantial evidence because he did not examine her. The court rejected this argument and found, as a matter of law, that your Board was justified in relying on the opinion of your medical advisor. The decision was issued on February 24, 2023. The Order is attached and its ultimate decision is noted below.

### **Appellate Court Ruling**

1. The judgment of the trial court is affirmed;
2. Decision of the Board of Retirement is affirmed.

### **Recommendation**

Counsel recommends the Board receive and file the attached Order.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

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

GLORIA MORGAN,

Plaintiff and Appellant,

v.

BOARD OF RETIREMENT OF THE KERN  
COUNTY EMPLOYEES' RETIREMENT  
ASSOCIATION,

Defendant and Respondent.

F083118

(Super. Ct. No. BCV-19-103153 )

**OPINION**

APPEAL from a judgment of the Superior Court of Kern County. William D. Palmer, Judge. (Retired Judge of the Kern Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.)

Law Office of Steven R. Rosales and Steven R. Rosales, for Plaintiff and Appellant.

Phillip T. Jenkins for Defendant and Respondent.

-ooOoo-

Appellant Gloria Morgan applied for a service-connected disability retirement due to stress and anxiety caused by her job as a dispatcher with the Kern County Sheriff's



Department. Her application was denied by the Board of Retirement of Kern County Employees' Retirement Association (Board). Morgan challenged the denial by filing a petition for writ of administrative mandate in the superior court. The court denied the writ petition after concluding it was required to conduct an independent review of the evidence and stating that she failed to carry her burden of proof.

On appeal, Morgan contends that she met her burden of proof by providing substantial evidence in support of her disability application. This contention employs the wrong standard of appellate review. To demonstrate a failure-of-proof determination was error, an appellant must establish that the evidence compels a finding in his or her favor as a matter of law. (*Valero v. Board of Retirement of Tulare County Employees' Assn.* (2012) 205 Cal.App.4th 960, 966 (*Valero*)). Here, Morgan argues that she carried her burden of proof by presenting substantial evidence to support her application. This argument does not acknowledge and, thus, is not tailored to the demanding compelled-as-a-matter-of-law standard of review. The trial court did not err in concluding Morgan did not carry her burden of proof because her evidence was not (1) uncontradicted and unimpeached and (2) of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding. Thus, a finding in her favor was not compelled as a matter of law.

We therefore affirm the judgment.

## **FACTS**

In January 1998, Morgan started her employment with the Kern County Sheriff's Department as a Sheriff Dispatcher I. She turned 24 the following April. After a year of service, Morgan was promoted to Sheriff Dispatcher II. In 2007, Morgan went to work as a dispatcher for the California Highway Patrol—an experience she described as “absolutely horrible.” After five weeks, she returned to working as a dispatcher for the Sheriff's Department.

### Personnel Reports

Morgan was given annual performance reviews and the administrative record contains many of the employee personnel reports Morgan's supervisor completed. Here, we provide an overview of Morgan's last four reports.

The August 2011 employee personnel report rated Morgan's performance as a dispatcher in over 20 categories as either above standard or standard and gave her an overall performance rating of above standard. The report said she was a dedicated employee concerned with officer and public safety and stated:

“Gloria, your knowledge and experience have made you an excellent dispatcher. In the past several years, you have handled more than your fair share of high priority events. Events that most dispatchers would never want to handle. At the time, you handled these events flawlessly and they have helped shaped the dispatcher that you are today.”

The August 2012 employee personnel report also rated Morgan's overall performance as of above standard, with an above standard or standard ratings in the various categories. The report described Morgan's duties as follows:

“The dispatcher's job is demanding and very stressful. As a Sheriff's Dispatcher 2 you are expected to answer emergency and non-emergency phone calls, competently dispatch on all four of the Sheriff's Office radio channels, dispatch for Animal Control and the Probation Department when needed, and be proficient in all computer inquiry systems. The job of dispatcher requires you to make split second decisions and have the ability to multi-task. You have succeeded in all of these areas and have set a high standard for yourself and your co-workers.”

The report described Morgan as hard working, dedicated, and always willing to work overtime—“the one person [her supervisor] can always count on when trying to fill a shift.” The report also described Morgan as an excellent dispatcher who performed tasks in ways that promoted officer safety and stated: “In the past several years, you have handled more than your fair share of high priority events. These events helped shape the dispatcher that you are today.” The report provided examples of situations handled by

Morgan during the preceding year and then stated: “You remain calm and in control during high stress events. You handle all emergency traffic with ease. You keep your voice even and monotone, which helps calm the units.” The report then described two laudatory notes Morgan received for her performance under pressure.

Morgan’s August 2013 employee personnel report again rated her overall performance as above standard and rated her outstanding (the highest rating) in the categories of quality of judgment and performance under pressure. Morgan received above standard ratings for application of effort, accuracy of work, public relations, written and oral expression, performance with minimum supervision, promptness in completing work, volume of work produced, and the customer service subcategories of quality of service, helpfulness, knowledge, and responsiveness. The report provided examples of situations that supported the ratings of above standard.

Morgan’s August 2014 employee personnel report rated her overall performance as standard and rated her as above standard in cooperation, application of effort, accuracy of work, quality of judgment, performance with minimum supervision, and performance under pressure. The report described Morgan “as an example of what a law enforcement dispatcher should be.” It also stated: “Your call taking is clear and to the point and always covers officer and public safety first. You remain cool and calm on the radio when things go bad.”

#### *Morgan’s Stress and Anxiety*

In May 2008, Morgan was working the radio, received a call about an accident, and started units to the scene. One responding deputy apparently pulled in front of another deputy’s car, his vehicle was “t-boned,” and he was killed. Later, Morgan reported this incident as what started her symptoms.

In August 2013, Morgan consulted with a therapist, complaining about moderate depression, mild anxiety, severe job stress, and moderate insomnia.

On September 9, 2013, Morgan was on the radio assisting deputies who were chasing two suspects through backyards and over fences. A suspect and deputy exchanged shots. The deputy reported the address and Morgan transposed numbers when she wrote it down, which resulted in the backup deputies being sent to the wrong location. The pursuing deputy ended up shooting the suspect. Morgan was upset by her mistake, and she reported that the deputies in a debriefing meeting were upset and surprised by the mistake. After the meeting, she became anxious, nervous and worried, with crying spells during her breaks. After one of the breaks, her supervisor noted that she was upset and started the process for Morgan to be seen by a doctor. In connection with that process, Morgan reported her job was causing her stress and anxiety stating that, over the years, she had become more anxious about (1) being unable to keep up with the large volume of telephone and radio traffic and (2) causing a unit to be injured or killed.

On September 16, 2013, Irene Sanchez, M.D., examined Morgan and completed a doctor's first report of occupational injury or illness form. Dr. Sanchez identified October 1, 1998 in response to the form's question about the date of injury or onset of illness. In the form's box for how the accident or exposure happened, Dr. Sanchez wrote: "Ongoing and long time exposure to high stress." Dr. Sanchez reported that Morgan cried through the entire interview and described several shootings, a five-year-old incident where an officer was hit by a car and injured, and the incident where Morgan gave the wrong address to deputies called as backup and a deputy pursuing suspects on foot. Morgan stated the nature of the calls caused her stress, but felt she could return to work and wanted to return. Dr. Sanchez told Morgan she would help Morgan with medications, prescribed Zoloft and Ativan, and requested approval for Morgan to consult with Kathleen Murphy, Ph.D., an industrial psychologist, about causation. Morgan chose not to take the medications.

On September 20, 2013, Morgan filed a workers' compensation claim asserting stress, anxiety and posttraumatic stress disorder (PTSD). The claim was supported by Dr. Sanchez's report of her examination of Morgan.

On October 2, 2013, Dr. Murphy interviewed Morgan. Dr. Murphy's report stated Morgan reported symptoms of stress, including nightmares, difficulty sleeping, feeling lethargic, being very emotional and anxious at work, and being depressed when not at work. Dr. Murphy diagnosed dysthymia disorder with anxiety, stated Morgan "is suffering from a significant amount of depression and anxiety," reported a Global Assessment of Functioning (GAF) score of 65, concluded the predominant cause of Morgan's emotional distress was industrial factors and, therefore, Morgan had an industrial injury. Dr. Murphy stated Morgan did not want to take medication and recommended therapy sessions first and, if symptoms did not decrease, a reconsideration of medication.

Morgan saw Dr. Murphy twice and, in December 2013, requested a change of psychotherapist. Morgan met with Dr. Sanchez on October 14, 2013, November 25, 2013, and January 6, 2014. Morgan reported that she was doing better, was doing peer counseling with coworkers, her sleep disturbances were greatly decreased. She remained opposed to prescription medication but was willing to try diphenhydramine (Benadryl) if needed, and she was awaiting sessions with a new counselor.

On January 15, 2014, L. Scott Frazier, Ph.D., a psychologist, examined Morgan and reviewed available records. Richard North, Ph.D., a psychologist, participated in the evaluation as a consultant. Each doctor is a qualified medical examiner. During the evaluation, Dr. Frazier took Morgan's activities of daily living, personal and social history, recent occupational history, and current complaints. Morgan stated that she was no longer having crying spells during her breaks. The evaluation included a review of relevant documents and "a complex psychological testing battery as well as a mental status examination."

One of the tests given was the Minnesota Multiphasic Personality Inventory-2, which the doctor's report described as the most widely used objective test of personality. The test included scales that measure the validity of the responses. Morgan's scores on the validity scales "indicated a valid and interpretable clinical profile." Based on the pretest interview, mental status examination, history, and the psychological tests, the doctors diagnosed an "Adjustment Disorder with Anxiety," stated it was predominately caused by the September 9, 2013 incident, and concluded Morgan was "temporarily partially disabled psychologically." Their report stated Morgan was capable of continuing with her usual functions as a dispatcher, would benefit from psychological treatment to reach maximum medical improvement, and recommended six to eight individual cognitive-behavioral psychotherapy sessions.

From February through April 2014, Morgan treated with Jennifer Predolin, Psy.D. On April 29, 2014, Dr. Sanchez completed a primary treating physician's permanent and stationary report (form PR-4) stating Morgan was "95% improved" and that she has no problems with nightmares or difficulty sleeping and "has no problems with her usual and customary duties as she shifted from nights to days." The report stated Morgan's anxiety and stress was "resolved" and "there is a 0% Whole Person Impairment." Dr. Sanchez discharged Morgan as cured and did not schedule a follow-up visit.

In September 2014, Morgan had another incident at work that triggered her stress and anxiety. It involved a two-year-old girl who drowned in a backyard kiddie pool. During an interview with KCERA investigators, Morgan described her reaction to the incident, stating: "I was sitting at the channel and I was just thinking about what a waste, what a shame that was, and I actually did get reprimanded for that because the supervisor that was on duty looked over and saw me sitting there because I wasn't doing anything. I wasn't typing, I wasn't answering any calls, I was just sitting there. And she – I was reprimanded for not continuing to dispatch, for taking that moment. And I just thought, this is really hard." Morgan stated multiple calls were going on, the call relating to the

drowning was still in progress “because we were still on scene and stuff was still going on there,” other calls needed to be dispatched because any death of a child automatically requires a homicide callout, and she was reprimanded “for just not keeping in motion the rest of the stuff that needed to be dispatched.”

Morgan’s primary care physician, Hugh Beatty, M.D., took her off work, with a leave of absence from September 20, 2014, until October 14, 2014. Dr. Beatty prescribed Lexapro, which Morgan found helpful, but she remained symptomatic.

On October 10, 2014, Morgan resumed care with Dr. Sanchez, who placed her on modified duty (i.e., clerical work with no dispatching) for a month. Dr. Sanchez’s progress report noted Morgan had a counseling session scheduled with Dr. Frazier and requested authorization for 12 sessions of consultation and treatment with Dr. Frazier.

On October 27, 2014, Morgan again met with Dr. Sanchez. Dr. Sanchez’s progress report stated Morgan has been authorized to see Dr. Frazier, but the appointment was scheduled for November 19, 2014, and Morgan asked to see someone sooner. Dr. Sanchez continued the Lexapro prescription, which Morgan stated helped slightly, and added Elavil at bedtime to help sleep and lessen anxiety. Dr. Sanchez’s office left messages with the claim adjuster, Dianne Proctor, to get the authorization changed to Dr. Greg Hirokawa, if he could see Morgan sooner than Dr. Frazier.

On October 31, 2014, Morgan saw Dr. Frazier. His progress report from that examination stated Morgan subjective complaints were ongoing crying, feelings of hopelessness, sadness, and anger as herself and coworkers. The objective findings line in the report stated: “She presents with symptoms of anxiety and depression.” The diagnoses line stated: “Per Dr. Frazier’s report of 1/15/14 of Adjustment Disorder with Anxiety.” Dr. Frazier stated he would provide cognitive behavioral therapy for 12 approved sessions, the next session would be on November 7, 2014, and Morgan could perform modified work pursuant to directions of her primary care physician. Dr.

Frazier's progress report from the November 7, 2014 meeting provided the same information.

Dr. Sanchez and Morgan also met twice in November and once in December 2014. Dr. Sanchez continued Morgan's work restrictions to January 20, 2015.

Dr. Hirokawa, a clinical psychologist and qualified medical examiner, first saw Morgan on December 30, 2014. In the subjective section of the progress note from that visit, Dr. Kirokawa stated that (1) Morgan was currently doing light duty clerical work with no problems, (2) Morgan was doing better with no dispatching duties but was likely to get worse with those duties, and (3) Morgan stated it was difficult being by herself and she was fearful of getting someone hurt. The objective section of the progress note stated Morgan's affect was tearful and that she should continue with current restrictions.

Dr. Hirokawa also saw Morgan in January and February 2015. His January 23, 2015 progress note stated Morgan had reached maximum medical improvement and he considered her "permanently partially disabled from performing her usual and customary [duties] of dispatcher with a restriction of not to perform potentially life threatening decisions or calls." He rated Morgan at 8 percent Whole Person Impairment and gave her a GAF score of 65. His February 9, 2015 progress note again stated Morgan had reached maximum medical improvement, her depression had continued, and she was unlikely to be able to perform duties involving life threatening situations.

Dr. Sanchez and Morgan met on January 20, 2015, and Morgan's work restrictions were continued to February 17, 2015. Dr. Sanchez's progress report stated Dr. Hirokawa had recommended Morgan retire from her position as he did not think she could do dispatching and did not think she would get better. Morgan indicated she would submit her retirement paperwork. Morgan also stated she did not want to continue with psychotropic drugs and had stopped taking Lexapro, although she felt better when on it.

On February 19, 2015, Dr. Sanchez met with Morgan and then completed a primary treating physician's progress report (form PR-2) and a primary treating



physician's permanent and stationary report (form PR-4). Dr. Sanchez diagnosed Morgan has having anxiety and stress with an aggravation of stress on October 10, 2014. Based on Dr. Hirokawa's conclusions, Dr. Sanchez "also declare[d] her Maximum Medical Improvement with provision of Future Medical Care" and concurred in his rating of 8 percent Whole Person Impairment. Dr Sanchez answered "Yes" to the question: "Is the permanent disability directly caused by an injury or illness arising out of and in the course of employment." Dr. Sanchez stated Morgan was still struggling with anxiety and had difficulty sleeping due to stress. Morgan wanted counseling and felt Dr. Hirokawa was not addressing her needs by just telling her that she would not be able to go back to work. Dr. Sanchez concluded that Morgan should get counseling for depression, stated she did not believe Dr. Hirokawa was providing this service, and requested authorization for 12 counseling sessions with Dr. Murphy. Morgan's work restrictions were continued to March 10, 2015.

On February 24, 2015, a claims adjuster notified the Sheriff's Department of Morgan's permanent restrictions. The notice also requested an interactive process meeting be scheduled with Morgan to discuss the restrictions and options for modified or alternate work.

#### *Application for Disability Retirement*

On March 1, 2015, Morgan signed an application for a service-connected disability retirement and submitted it to the Kern County Employees' Retirement Association (KCERA). The application was supported by an attending physician report from Dr. Irene Sanchez that stated Morgan was permanently incapacitated from performing her usual duties, her restrictions were no dispatching and no attending calls that require emergency decision making, and clerical work was a reasonable permanent accommodation.

On March 19, 2015, at the interactive process meeting, Morgan was offered alternate employment in a clerical position at the county jail. The next day, Morgan

accepted the position. However, Morgan did not stay at that job. She stated she left after an incident where she pulled into the facility, saw a deputy who use to work with a deputy who had been killed on duty, and immediately began crying.

In April 2015, the Sheriff's Department completed a "Department Statement of Facts and Circumstances" for Morgan stating there was no reasonable accommodation in the job classification of Sheriff Dispatcher II that could be made for Morgan with her permanent restrictions (i.e., no answering 911 calls or attending to calls requiring emergency decision making). It also stated alternate work was offered to Morgan in a different job classification.

On March 31, 2015, Dr. Murphy met with Morgan. They had at least five other appointments, with the last occurring on June 24, 2015. Dr. Murphy's progress report from the first meeting stated Morgan was tearful and depressed, but reported Lexapro helps. It also stated Morgan was a perfectionist and it was very hard for her to know she cannot dispatch anymore. The assessment section of the report gave a diagnosis of "300.4," a GAF score of 60, and Morgan's current disability status as "TPD." The May 7, 2015, progress report stated Morgan reported doing much better and looked better but was still tearful at times when talking about work. Dr. Murphy increased Morgan's GAF score to 65. The May 21, 2015 progress report stated Morgan reported it was a rough week because the anniversary of the deputy's death was two days away and reported sleeping better.

The June 4, 2015 progress report stated Morgan was doing better emotionally, looked good and had decreased depression. Morgan reported the medication was doing well, she was sleeping good, and she now cries only in therapy. Dr. Murphy's diagnosis was PTSD with a permanent and sedentary disability status of 16 percent. The June 24, 2015 progress report stated Morgan was doing well at the time, no further sessions had been scheduled, and Morgan could ask Dr. Sanchez to send her back if her condition

worsened. Dr. Murphy listed the diagnosis as PTSD, gave Morgan a GAF score of 70, and wrote “P+S” as the current disability status.

On August 4, 2015, Morgan saw Dr. Sanchez for anxiety and stress after getting together with former coworkers. Morgan reported that she had been able to sleep, she was not working, she was doing well with Lexapro, and Dr. Murphy had recommended that she not return to work for the county. Dr. Sanchez’s progress report diagnosed Morgan with anxiety and stress, stated “[s]ame temporary work restrictions,” and scheduled a follow-up appointment for six weeks later.

On September 24, 2015, Morgan asked Dr. Sanchez to reduce her daily Lexapro dose from 20 milligrams to 10 milligrams, which Dr. Sanchez did.

On April 1, 2016, Morgan had an unscheduled visit with Dr. Sanchez that was arranged by her adjuster. Morgan had been working for a new employer in a “planner” position that required minimal telephone work. When another employee quit about three weeks earlier, Morgan had been pulled from her usual duties to do dispatching. Morgan reported it brought on flashbacks to her experiences with the Sheriff’s Department and was feeling a lot of anxiety and, without Lexapro, she had started crying. Dr. Sanchez prescribed Lexapro and requested approval of four sessions of treatment with Dr. Murphy. Dr. Sanchez reported that there had been an aggravation of preexisting anxiety which was a change in Morgan’s condition.

In 2018, James O’Brien, M.D., a Diplomate of the American Board of Psychiatry and Neurology was retained by KCERA to review Morgan’s disability medical records. Dr. O’Brien’s written evaluation responded to a question about objective evidence of the disability claimed by stating: “There are little to no objective medical findings. Most diagnostic impressions offered by treating doctors have been based on subjective symptoms rather than objective findings.” Dr. O’Brien stated that the medical records contained no objective evidence of psychotic or cognitive impairment that would prevent Morgan from performing the normal duties of her occupation. He noted that because the

claim was psychological, most of the complaints would be subjective rather than objective, but there was very little evidence of objective psychological testing. He then stated: “Dr. Frazier’s MMPI results from the exam of 1/23/14 were actually quite normal, showing only slight anxiety consistent with an Adjustment Disorder and a GAF of 65, which is not a major mental illness.”

Addressing the medical treatment Morgan received, Dr. O’Brien stated: “The prescriptions have not been effective and medications were not changed frequently enough to optimize efficacy. The form of psychotherapy has been nonfacilitative and enabling.” He also stated (1) Morgan “was not examined objectively enough, and secondary gain issues were ignored during treatment”; (2) Morgan “was not compliant with the recommendation for modified work and elected to simply retire instead”; (3) “[t]here is no substantial evidence that [Morgan] is currently incapacitated”; and (4) Morgan “is fully capable of returning to her former employment in the same capacity.” Dr. O’Brien addressed the link between Morgan’s employment and incapacity by stating “there was no evidence of substantial incapacity to begin with.”

#### Denial of Application

In May 2018, Morgan was notified that the KCERA’s staff disability application group recommended a denial of the application and informed Morgan of her right to request an evidentiary hearing before a hearing officer. Morgan requested an evidentiary hearing

The hearing was held on November 5, 2018, and Morgan appeared without counsel. In January 2019, Morgan retained an attorney to represent her and prepare a closing brief. Later that January, the parties submitted their closing briefs to the hearing officer.

In February 2019, the hearing officer issued a 19-page decision that recommended Morgan’s application be denied on the ground she was not permanently incapacitated from performing the job duties of a dispatcher. The hearing officer explicitly found

Morgan “lacks credibility,” which, on appeal, Morgan describes as a careless statement. The issue of whether Morgan’s alleged disability was service connected was not reached. Morgan submitted written objections to the hearing officer’s decision.

On August 14, 2019, the Board adopted the hearing officer’s findings of fact and recommendation to deny Morgan’s application for a disability retirement. KCERA notified Morgan of the Board’s decision, stated the decision was final for all administrative purposes, stated judicial review had to be sought within 90 days, and cited Code of Civil Procedure section 1094.5.

### **PROCEEDINGS**

In November 2019, Morgan filed a verified petition for writ of administrative mandamus challenging the Board’s decision that she was not permanently incapacitated due to a work-related injury. The Board’s answer admitted Morgan was a member of the KCERA<sup>1</sup> and admitted Morgan had exhausted all her administrative remedies. The Board denied the allegations that its decision was not supported by the evidence or was otherwise erroneous.

In April 2021, the superior court held a hearing on Morgan’s motion for a peremptory writ of mandate. A few days after the hearing, the court issued an unsigned minute order announcing its decision to affirm the Board’s decision and deny the writ petition. The minute order set forth the court’s rationale and directed counsel for the Board to prepare and circulate a judgment.

In July 2021, the superior court signed and filed a judgment denying the petition for writ of mandate. Morgan timely appealed.

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<sup>1</sup> Government Code sections 31470 (definition of member) and 31552 (automatic membership and waiver of membership).

## DISCUSSION

### I. BASIC LEGAL PRINCIPLES

#### A. Law Governing Disability Retirement

The County Employees Retirement Law of 1937 (CERL; Gov. Code, § 31450 et seq.) provides county employees with disability retirement benefits in certain situations. Government Code section 31720, subdivision (a) states: “Any member permanently incapacitated for the performance of duty shall be retired for disability regardless of age if, and only if: [¶] (a) The member’s incapacity is a result of injury or disease arising out of and in the course of the member’s employment, and such employment contributes substantially to such incapacity.”

The employee has the burden of proving his or her incapacity is both permanent and service connected. (*Rau v. Sacramento County Retirement Board* (1966) 247 Cal.App.2d 234, 238; *Lindsay v. County of San Diego Retirement Board* (1964) 231 Cal.App.2d 156, 160–162.) “Incapacity” means the substantial inability of the employee to perform his or her usual duties. (*Mansperger v. Public Employees’ Retirement System* (1970) 6 Cal.App.3d 873, 876 [interpreting “incapacity” under Gov. Code, § 21022].) An employee’s incapacity is service connected if there is a “ ‘real and measurable’ connection” between the employee’s job and his or her incapacitating condition. (*Bowen v. Board of Retirement* (1986) 42 Cal.3d 572, 578.) The condition must “permanently incapacitate[.]” the employee “physically or mentally for the performance of his duties.” (Gov. Code, § 31724.)

#### B. Superior Court Review of Administrative Decision

Code of Civil Procedure section 1094.5 establishes administrative mandamus as the method for obtaining judicial review of an administrative agency’s final adjudicatory decisions. (*Paxton v. Board of Administration of the Public Employees’ Retirement System* (2019) 35 Cal.App.5th 553, 559 (*Paxton*).) One question that can be raised in a

mandamus petition is “whether there was any prejudicial abuse of discretion” in reaching the decision. (§ 1094.5, subd. (b).)

When a superior court reviews an administrative decision that affects a vested, fundamental right, such as the retirement benefits for which Morgan applied, the superior court exercises independent judgment on the evidence pursuant to subdivision (c) of section 1094.5. (*Ibid.*; *Alberda v. Board of Retirement of Fresno County Employees’ Retirement Assn.* (2013) 214 Cal.App.4th 426, 433 (*Alberda*)). Under independent judgment review, an “abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence.” (§ 1094.5, subd. (c).)

Superior courts conducting an independent review “must afford the agency’s decision a strong presumption of correctness and must impose upon the petitioner the burden of showing that the agency’s findings are contrary to the weight of the evidence, i.e., the decision was not supported by the preponderance of the evidence.” (*Alberda, supra*, 214 Cal.App.4th at p. 433.) If the superior court determines the administrative findings are not supported by the weight of the evidence, an abuse of discretion has occurred. (*Ibid.*)

“ ‘Because the [superior] court ultimately must exercise its own independent judgment, that court is free to substitute its own findings after first giving due respect to the agency’s findings.’ [Citations.] Thus, while the [superior] court begins its review with a presumption of the correctness of the administrative findings, the presumption is rebuttable and may be overcome by the evidence. [Citation.] ‘When applying the independent judgment test, the [superior] court may reweigh the evidence and substitute its own findings for those of the [agency], after first giving due respect to the [agency]’s findings.’ [Citation.] This includes examining the credibility of witnesses.” (*Alberda, supra*, 214 Cal.App.4th at p. 433; see *Barber v. Long Beach Civil Service Com.* (1996) 45 Cal.App.4th 652, 658 “[A]n exercise of independent judgment *does* permit (indeed, it

requires) the [superior] court to reweigh the [administrative hearing] evidence by examining the credibility of witnesses.”].)

### C. Appellate Court Review

Generally, the standard of review applied by an appellate court depends on the particular aspect of the superior court’s decision being challenged. (See *Haraguchi v. Superior Court* (2008) 43 Cal.4th 706, 711 [abuse of discretion is not a unified standard].) In this appeal, the relevant aspects of the superior court’s decision include (1) its resolution of questions of law, (2) its findings as to disputed facts, and (3) its determination that Morgan, the party with the burden of proof, failed to carry that burden.

First, a superior court’s resolution of a question of law, such as the interpretation of a statute, is subject to de novo review on appeal. (*Paxton, supra*, 35 Cal.App.5th at p. 559.) Thus, an appellate court decides a question of law without deference to how it was answered below. (*Coburn v. Sievert* (2005) 133 Cal.App.4th 1483, 1492.)

Second, a superior court’s express or implied findings as to disputed facts are subject to review under the substantial evidence test. (*Paxton, supra*, 35 Cal.App.5th at p. 559; *Valero, supra*, 205 Cal.App.4th at p. 965.) Under this test, evidence is “substantial” if it is of ponderable legal significance, reasonable in nature, credible, and of solid value. (*Meyers v. Board of Administration etc.* (2014) 224 Cal.App.4th 250, 256; *Brewer v. Murphy* (2008) 161 Cal.App.4th 928, 935–936.) When applying the substantial evidence test “after the superior court has applied its independent judgment to the evidence, all conflicts must be resolved in favor of the respondent and all legitimate and reasonable inferences made to uphold the superior court’s findings; moreover, when two or more inferences can be reasonably deduced from the facts, the appellate court may not substitute its deductions for those of the superior court.” (*Lacy v. California Unemployment Ins. Appeals Bd.* (1971) 17 Cal.App.3d 1128, 1134; see *Cameron v. Sacramento County Employees’ Retirement System* (2016) 4 Cal.App.5th 1266, 1278.)



Appellate courts may not reweigh the evidence or resolve conflicts in the evidence and usually are bound by the trial court's credibility determinations. (*Barber v. Retirement Board* (1971) 18 Cal.App.3d 273, 279.)

Third, when the superior court has determined that the party with the burden of proof did not carry the burden, the appellate court considers “ ‘whether the evidence compels a finding in favor of [the appellant] as a matter of law.’ ” (*Valero, supra*, 205 Cal.App.4th at p. 966.) A finding in appellant's favor is compelled when the appellant's evidence was (1) uncontradicted and unimpeached and (2) of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding. (*Ibid.*; see *Roesch v. De Mota* (1944) 24 Cal.2d 563, 570–571.)

## II. DECISIONS BELOW

### A. Board's Administrative Decision

The hearing officer's decision was adopted by Board and, thus, became the final administrative decision subject to judicial review by writ of administrative mandamus. Accordingly, we refer to that 19-page decision as the Board's decision.

The Board's decision stated an applicant for a disability retirement had the burden of proof and that “there is an issue of whether the medical documentation is sufficient to support [Morgan's] claim of service-connected disability.” It noted Morgan's doctors (Dr. Hirokawa, Dr. Sanchez, and Dr. Murphy) stated she was permanently disabled from ever returning to work as a dispatcher and the injury was 100 percent service connected. The decision also noted Morgan's workers' compensation record was relevant and should be considered, but the Workers' Compensation Appeals Board decision was not binding on the Board. The workers' compensation decision awarded Morgan \$12,765 and stated she had a 16 percent permanent disability from a stress injury caused by her job as a dispatcher.

The Board's decision stated Morgan lacked credibility and explained in part by stating: "Her alleged symptoms do not align with the actual sequence of events, and at times she co-opts the experiences of other dispatchers to bolster her claims. Further, during the times she claims debilitating symptoms the results of her objective medical examinations show only slight symptomology or impairment." The decision also stated that the reports of Morgan's three doctors "are based on [her] history and subjective complaints and are not persuasive" and that the workers' compensation decision relied on Dr. Sanchez's report, which relied on Morgan's subjective complaints without any objective medical findings. The decision noted Dr. O'Brien reviewed 444 pages of medical records, prepared a comprehensive medical report, and opined that most of the diagnostic impressions from treating doctors were based on subjective symptoms rather than objective findings.

The Board's decision stated Dr. Frazier and Dr. O'Brien opined that there was no substantial evidence to support the conclusion that Morgan could not return to her job as a dispatcher. Morgan argues the doctor's opinions about substantial evidence are legal conclusions and, therefore, do not constitute substantial *evidence*. (See *Smith v. Selma Community Hospital* (2008) 164 Cal.App.4th 1478, 1515 [existence or nonexistence of substantial evidence is a question of law].) In addition, she argued Dr. Frazier's report is out of date because it was made before the drowning incident aggravated her psychiatric injury. She also argues Dr. O'Brien's opinions are speculative because they were inferred from GAF scores and the GAF test has been abandoned because it is unreliable.<sup>2</sup>

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<sup>2</sup> Morgan cites the *Diagnostic and Statistical Manual of Mental Disorders* (5th ed. 2013) and quotes its statement recommending that " 'the GAF be dropped from [the manual] for several reasons, including its conceptual lack of clarity (i.e., including symptoms, suicide risk, and disabilities in its descriptors) and questionable psychometrics in routine practice.' " The Board's decision stated Morgan's "contention that Dr. O'Brien relied too much on the GAF is not persuasive as [her] own physicians and therapists also relied on the GAF measurement." As a court of review, we may not reweigh the evidence, which includes the weight given to the GAF scores.

B. Superior Court's Decision

The superior court's reasoning is set forth in an unsigned minute order and the subsequently entered judgment. The superior court relied on *Fukuda v. City of Angels* (1999) 20 Cal.4th 805 in stating that (1) it was exercising an independent judgment review in considering the Board's decision and weighing the evidence before the Board; (2) the Board's finding came before it with a strong presumption of correctness; and (3) "the burden rests on the complaining party to convince the court that the board's decision is contrary to the weight of the evidence." (20 Cal.4th at 812)" These three legal conclusions are subject to our de novo review, and we conclude the court correctly identified the principles governing its review of the Board's decision. (See pt. I.B., *ante*.)

After setting forth the principles applicable to its review, the superior court stated that Morgan "has not met her burden." As this court discussed in *Valero*, determining that the party with the burden of proof did not carry that burden is distinct from finding facts in favor of the opposing party. (See *Valero, supra*, 205 Cal.App.4th at pp. 965–966 [Part II, Standard of Review].) The finding-compelled-as-a-matter-of-law standard of review applied to a failure-of-proof determination is different from the substantial evidence standard of review applied to factual findings. (See part I.C., *ante*.)

The superior court could have stopped its analysis with its failure-of-proof determination, but it proceeded to an alternate level of analysis and addressed what the evidence had proven, stating: "As discussed below, the Court finds that the evidence as a whole, as set forth in the administrative record, preponderates in favor of [the] Board, and its decision." Next, the court stated: "The findings of the hearing officer, as adopted by the Board, sets forth a very thorough recitation of the evidence, law, and support for the decision. There is not a need to repeat the same here." One inference that can be drawn from the court's statement that the contents of the Board's decision need not be repeated is that the court correctly regarded the findings in the administrative decision as irrelevant because it independently made its own findings under the preponderance of the evidence

standard. In other words, the administrative findings were superseded by the findings made by the court after its independent evaluation of the evidence in the administrative record.

Immediately after stating the findings in the administrative decision need not be repeated, the superior court stated:

“Dr. Frazier, with agreement from Dr. North, opined that [Morgan] ‘...is able to continue with her current position as a dispatcher with the Kern County Sheriff’s Department.’ (COK-191) The opinion(s), *vas [sic]* evidence, of these well qualified Doctors is substantial and in and of its self, strongly supports the Board’s decision. Clearly the opinion(s) is bolstered further by the evidence presented by Dr. O’Brien; a Diplomat of the American Board of Psychiatry and Neurology; which evidence is substantial and supports the findings of the Respondent Board.

“The Court does not propose to respond to all of [Morgan’s] arguments, however, must note that all of the health care providers involved In this case relied on an assessment of GAF, and thus the Court must conclude that all were conveying the opinion that Petitioner was able to function relatively normally.”

Based on the foregoing, the superior court stated the writ petition was denied and the Board’s decision was affirmed.

### III. MORGAN’S CLAIMS OF SUPERIOR COURT ERROR

Morgan’s opening brief sets forth three issues involving superior court error. First, Morgan contends the court erred because she met her burden of proof to be granted a service-connected disability retirement by providing substantial evidence in support of her application. Second, Morgan contends the court’s reasons for denying her service-connected disability are not supported by the facts in the record because Dr. Frazier’s opinion was out of date since it was given before she returned to work and aggravated her psychiatric injury. Third, she contends the “court’s judgment and its reliance on the

proposed decision was an error because the proposed decision and the attacks on Ms. Morgan’s credibility is not supported by the facts in the record.”<sup>3</sup>

A. Failure of Proof Determination

The superior court’s judgment stated that “ ‘the burden rests on the complaining party to convince the court that the board’s decision is contrary to the weight of the evidence’ ” and that Morgan “has not met her burden.” On appeal, Morgan contends she met her burden of proof to be granted a service-connected disability retirement by providing substantial evidence in support of her application. Morgan supports this contention by arguing that (1) the burden of proof in the administrative proceeding for a service-connected disability retirement is a preponderance of substantial evidence and (2) her psychiatric permanent incapacity is established by the preponderance of substantial evidence. Morgan’s challenge to the court’s failure-of-proof determination fails to use the appropriate standard of review.<sup>4</sup>

In *Valero*, a case in which a former county employee challenged the county retirement board’s denial of his application for a service-connected disability retirement, the issue on appeal was “framed as whether there is substantial evidence in the record to

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<sup>3</sup> Morgan’s use of the term “proposed decision” is not accurate because the hearing officer’s decision was adopted by the Board. Thus, the Board’s decision is properly described as a “final administrative ... decision” as that term is used in Code of Civil Procedure section 1094.5, subdivision (a).

<sup>4</sup> Since *Valero* was issued, no subsequent published decision of the Court of Appeal or the California Supreme Court has disagreed with its conclusion that a superior court’s failure-of-proof determination is review on appeal under the finding-compelled-as-a-matter-of-law standard. In addition, this court has published two other opinions applying this standard to a lower tribunal’s failure-of-proof determination. (See *Wells Fargo Bank, N.A. v. 6354 Figarden General Partnership* (2015) 238 Cal.App.4th 370, 390 [standard applied to superior court’s order determining redemption price in a judicial foreclosure proceeding]; *Dreyer’s Grand Ice Cream, Inc. v. County of Kern* (2013) 218 Cal.App.4th 828, 838 [standard applied to determination by county’s assessment appeals board that taxpayer did not meet its burden of proving an obsolescence adjustment should have been applied to his property].)

support the trial court’s conclusion that Valero had not met his burden to show a real and measurable connection between his psychiatric disability and his employment.” (*Valero, supra*, 205 Cal.App.4th at p. 965.) We rejected the parties’ framing of the issue because “there is a conceptual and substantive distinction within the substantial evidence analysis depending on who has the burden of proof on a particular issue, which party prevailed on that issue and who appealed.” (*Ibid.*) When the superior court makes a failure-of-proof determination, the issue on appeal is whether the evidence compels a finding in favor of the appellant as a matter of law. (*Id.* at p. 966.) To satisfy this standard of review, Morgan must show that her evidence was uncontradicted and unimpeached and of such a character and weight as to leave no room for a superior court determination that it was insufficient to support a finding in her favor. (*Ibid.*)

Morgan’s evidence was contradicted by the opinion of Dr. O’Brien that she “is fully capable of returning to her former employment in the same capacity.” Under the applicable standard of review, this court may not reweigh the evidence or resolve the conflict in Dr. O’Brien’s opinion and the evidence relied upon by Morgan. (See *Barber v. Retirement Board, supra*, 18 Cal.App.3d at p. 279.) We do not provide a detailed analysis of the evidence because Morgan’s appellate briefs did not acknowledge the applicable standard of review and present arguments attempting to show that a finding in her favor was compelled as a matter of law.

C. Substantial Evidence to Support Superior Court’s Findings

As an alternative to determining Morgan had not met the burden, the superior court found “that the evidence as a whole, as set forth in the administrative record, preponderates in favor of Respondent Board, and its decision.” Challenging this finding, Morgan contends “there is no substantial evidence to support the lower court’s decision.”

This contention and Morgan’s arguments about credibility need not be addressed because the superior court’s determination that Morgan did not meet her burden provides

sufficient grounds for upholding the denial of the petition for writ of administrative mandamus.

**DISPOSITION**

The judgment is affirmed. The parties shall bear their own costs on appeal. (Cal. Rules of Court, rule 8.278(a)(5).)



FRANSON, J.

**WE CONCUR:**



LEVY, Acting P. J.



MEEHAN, J.

**KERN COUNTY EMPLOYEE'S RETIREMENT ASSOCIATION (KCERA)  
Board of Retirement**

**SUMMARY OF PROCEEDINGS**

**Teleconference Meeting – Board of Retirement Meeting**

**February 8, 2023**

**8:31 a.m.**

Board Members: Adams, Contreras (Alternate), Couch, Vice-Chair Franey, Gonzalez, Hughes, Kaufman, Kratt, Nunneley (Alternate), Seibly (Alternate), Chair Whitezell

**ROLL CALL**

Present: Adams, Contreras, Franey, Gonzalez, Kaufman, Kratt, Nunneley, Seibly, Whitezell

Absent: Couch, Hughes

**SALUTE TO FLAG – TRUSTEE RICK KRATT**

**MOMENT OF SILENCE**

**CONSENT MATTERS**

*All consent matter items listed below with an asterisk (\*) were considered to be routine and non-controversial by staff and approved by one motion, unless otherwise noted.*

NOTE: The vote is displayed in bold below each item. For example, Couch-Kaufman denotes Trustee David Couch made the motion and Trustee Jordan Kaufman seconded the motion.

- \*1. Findings and new Initial Resolution needed to utilize alternative teleconferencing requirements during a state of emergency pursuant to California Government Code section 54953 of the Ralph M. Brown Act, as amended by Assembly Bill 361 – **ADOPTED FINDINGS FOR THE BOARD AND ALL KCERA STANDING COMMITTEES; APPROVED 30-DAY RESOLUTION**

**Franey-Kratt – 6 Ayes**



\*2. Summary of proceedings of the following meetings:

- December 12, 2022 Investment Committee
- December 12, 2022 Nominating Committee
- December 14, 2022 Board of Retirement

RECEIVED AND FILED

**Franey-Kratt – 6 Ayes**

\*3. Report from the KCERA office on members retired from service for the months of December 2022 and January 2023 – RATIFIED

**Franey-Kratt – 6 Ayes**

\*4. Report from the KCERA office on deceased retirees for the months of December 2022 and January 2023 – RECEIVED AND FILED

**Franey-Kratt – 6 Ayes**

\*5. Report of current disability retirement applications and appeals of KCERA Board decisions for the period ending January 31, 2023 – RECEIVED AND FILED

**Franey-Kratt – 6 Ayes**

\*6. Securities Lending Earnings Summary Report for the periods November 1-30, 2022 and December 1-31, 2022 from Deutsche Bank – RECEIVED AND FILED

**Franey-Kratt – 6 Ayes**

\*7. KCERA asset allocation, cash flow position, investment fees cash flow, and operating expense budget status reports for the months of November and December 2022 – RECEIVED AND FILED

**Franey-Kratt – 6 Ayes**

\*8. KCERA Class Action Proceeds Report from October 1, 2022 through December 31, 2022 from the Northern Trust Company – RECEIVED AND FILED

**Franey-Kratt – 6 Ayes**

\*9. Corrections in Benefit Payments Report for the period July through December 2022 – RECEIVED AND FILED

**Franey-Kratt – 6 Ayes**

- \*10. Corrections in Benefit Contributions Report for the period July through December 2022 – RECEIVED AND FILED

**Franey-Kratt – 6 Ayes**

- \*11. Glass Lewis Proxy Voting Management Report for the period January 1 through December 31, 2022 –

THIS ITEM REMOVED FROM CONSENT AGENDA

- \*12. 2023 Board of Retirement Committee Assignments – RECEIVED AND FILED

**Franey-Kratt – 6 Ayes**

- \*13. Board of Retirement Semi-annual Trustee Education Report – RECEIVED AND FILED; POSTED TO KCERA WEBSITE IN ACCORDANCE WITH CALIFORNIA GOVERNMENT CODE SECTION 31522.8(d)

**Franey-Kratt – 6 Ayes**

- \*14. Kern County Employees’ Retirement Association 2022 Annual Comprehensive Financial Report (ACFR) for the fiscal years ended June 30, 2022 and 2021 – RECEIVED AND FILED

**Franey-Kratt – 6 Ayes**

- \*15. Auditor’s reports to management for the fiscal year ended June 30, 2022 – APPROVED AUDITOR’S REPORTS FOR THE FISCAL YEAR ENDED JUNE 30, 2022

**Franey-Kratt – 6 Ayes**

- \*16. Letter from Segal Consulting, dated January 23, 2023, on annual cost-of-living adjustment (COLA) rates as of April 1, 2023 – ADOPTED THE FOLLOWING:

RETIREMENT DATE	COLA
ON OR BEFORE APRIL 1, 2023	2.5%

**Franey-Kratt – 6 Ayes**

- \*17. Letter from Segal, dated January 13, 2023, regarding Five-Year Projection of Employer Contribution Rates based on June 30, 2022 Valuation – RECEIVED AND FILED; DISTRIBUTED TO KCERA PLAN SPONSORS TO BE INTEGRATED INTO PAYROLL PROCESS

**Franey-Kratt – 6 Ayes**

- \*18. Appointment of Retiree Extra-Help Sofia Reyes, effective February 13, 2023 to June 30, 2023 – RECEIVED AND FILED

**Franey-Kratt – 6 Ayes**

- \*19. Memorandum from Chief Legal Officer Jennifer Esquivel Zahry, dated February 8, 2023, regarding gift restrictions – RECEIVED AND FILED

**Franey-Kratt – 6 Ayes**

- \*20. Memorandum from Chief Legal Officer Jennifer Esquivel Zahry, dated February 8, 2023, regarding gifts of travel – RECEIVED AND FILED

**Franey-Kratt – 6 Ayes**

- \*21. Report on Special Pays Codes classified by the Chief Executive Officer –

THIS ITEM REMOVED FROM CONSENT AGENDA

- \*22. Invitation for trustees to attend the 2023 California Association of Public Retirement Systems (CALAPRS) General Assembly, March 4-7, 2023 in Monterey, CA – APPROVED THE ATTENDANCE OF TRUSTEES DUSTIN CONTRERAS, PHIL FRANEY AND JUAN GONZALEZ

**Franey-Kratt – 6 Ayes**

### **PUBLIC COMMENTS**

23. The public is provided the opportunity to comment on agenda items at the time those agenda items are discussed by the Board. This portion of the meeting is reserved for persons to address the Board on any matter not on this agenda but under the jurisdiction of the Board. Board members may respond briefly to statements made or questions posed. They may ask a question for clarification and, through the Chair, make a referral to staff for factual information or request staff to report back to the Board at a later meeting. Speakers are limited to two minutes. Please state your name for the record prior to making a presentation – NONE

THIS ITEM HEARD OUT OF ORDER

**INVESTMENT MATTERS**

24. Presentation on Annual Private Markets Plan presented by Andrea Auerbach, Investment Managing Director, Keirsten Lawton, Investment Managing Director, Kelly Jensen, Senior Investment Director, Maria Surina, Investment Director, Cambridge Associates, and Chief Investment Officer Daryn Miller, CFA – KELLY JENSEN, ANDREA AUERBACH, KEIRSTEN LAWTON AND MARIA SURINA, CAMBRIDGE ASSOCIATES, HEARD; CHIEF INVESTMENT OFFICER DARYN MILLER, CFA, HEARD

TRUSTEE JOSEPH D. HUGES ARRIVED AT 8:41 A.M.

TRUSTEE DAVID COUCH ARRIVED AT 8:43 A.M.

RECEIVED AND FILED

**Gonzalez-Kratt – 8 Ayes**

THIS ITEM HEARD OUT OF ORDER

25. Presentation on the 4<sup>th</sup> Quarter Investment Performance Review for the period ending December 31, 2022 by Scott Whalen, CFA, Verus – SCOTT WHALEN, CFA, VERUS, HEARD; TRUSTEE JEANINE ADAMS HEARD; CHIEF INVESTMENT OFFICER DARYN MILLER, CFA, HEARD

RECEIVED AND FILED

**Franey-Kratt – 8 Ayes**

THIS ITEM HEARD OUT OF ORDER

26. Presentation on the 4<sup>th</sup> Quarter 2022 Portfolio Review presented by Spencer Edge, Albourne America<sup>1</sup> – SPENCER EDGE, ALBOURNE AMERICA, HEARD; TRUSTEE JUAN GONZALEZ HEARD; CHIEF INVESTMENT OFFICER DARYN MILLER, CFA, HEARD

TRUSTEE RICK KRATT LEFT AT 9:53 A.M.

RECEIVED AND FILED

**Franey-Gonzalez – 8 Ayes**

*Trustee Dustin Contreras voted in the place of Trustee Kratt*

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<sup>1</sup> Written materials and investment recommendations from the consultants, fund managers and KCERA investment staff relating to alternative investments are exempt from public disclosure pursuant to California Government Code §6254.26, §6255, and §54957.5.

11. Glass Lewis Proxy Voting Management Report for the period January 1 through December 31, 2022 – VICE-CHAIR PHIL FRANNEY HEARD; TRUSTEE JEANINE ADAMS HEARD; CHIEF EXECUTIVE OFFICER DOMINIC BROWN HEARD; CHIEF LEGAL OFFICER JENNIFER ZAHRY HEARD

TRUSTEE RICK KRATT RETURNED AT 9:59 A.M.

RECEIVED AND FILED

**Adams-Franey – 8 Ayes**

21. Report on Special Pay Codes classified by the Chief Executive Officer – CHAIR TYLER WHITEZELL HEARD; TRUSTEE JUAN GONZALEZ HEARD; CHIEF EXECUTIVE OFFICER DOMINIC BROWN HEARD; CHIEF LEGAL OFFICER JENNIFER ZAHRY HEARD

RECEIVED AND FILED

**Gonzalez-Couch – 8 Ayes**

**ADMINISTRATIVE MATTERS**

27. Trustee education regarding AB 2449 presented by Chief Executive Officer Dominic Brown and Chief Legal Officer Jennifer Zahry – CHAIR TYLER WHITEZELL HEARD; VICE-CHAIR PHIL FRANNEY HEARD; TRUSTEES JEANINE ADAMS, DAVID COUCH, JUAN GONZALEZ, JORDAN KAUFMAN, RICK KRATT AND CHASE NUNNELEY HEARD; CHIEF EXECUTIVE OFFICER DOMINIC BROWN HEARD; CHIEF LEGAL OFFICER JENNIFER ZAHRY HEARD

RECEIVED EDUCATIONAL TRAINING (32 MINUTES TRUSTEE EDUCATION CREDIT)

**STAFF REPORTS**

28. Report from Chief Executive Officer

CHIEF EXECUTIVE OFFICER DOMINIC BROWN REPORTED THE FOLLOWING:

- BOARD REFERRAL UPDATE
- STAFFING UPDATE
- SOLAR PROJECT UPDATE
- UPDATE ON RFP FOR OTHER AUDIT SERVICES
- GOVERNANCE CONSULTANT AON CONDUCTING TRUSTEE INTERVIEWS FOR STRATEGIC PLANNING
- MMRO UPDATE
- BOARDROOM UPGRADE
- OPERATIONS ACTIVITY
- UPCOMING MEETINGS AND EVENTS

TRUSTEES DAVID COUCH AND RICK KRATT HEARD

29. Report from Chief Investment Officer

CHIEF INVESTMENT OFFICER DARYN MILLER, CFA, REPORTED THE FOLLOWING:

- DECEMBER 2022 AND JANUARY 2023 REBALANCING ACTIVITY
- PORTFOLIO POSITIONING & MARKET UPDATE
- KEY INITIATIVES & UPDATES
- NEW SENIOR INVESTMENT OFFICER GEOFF NOLAN
- UPCOMING INVESTMENT COMMITTEE MEETINGS

TRUSTEE JEANINE ADAMS HEARD

30. Report from Chief Legal Officer

CHIEF LEGAL OFFICER JENNIFER ZAHRY REPORTED THE FOLLOWING:

- SECURE 2.0
- GIFTS AND TRAVEL
- Q4 2022 METRICS
- FEBRUARY CALENDAR ITEMS

TRUSTEE JEANINE ADAMS HEARD

### **COMMITTEE REPORTS**

31. Report from Committee Chairs:
- a. Administrative Committee: GONZALEZ – LOOKING FORWARD TO UPCOMING MEETINGS
  - b. Finance Committee: CONTRERAS – LOOKING FORWARD TO UPCOMING MEETING
  - c. Investment Committee: KRATT – UPCOMING MEETING FEBRUARY 27, 2023
  - d. KCERA Property, Inc.: KRATT – DISCUSSION PENDING

### **CALL FOR PUBLIC COMMENT ON EXECUTIVE SESSION ITEM(S) – NONE**

### **EXECUTIVE SESSION**

32. CONFERENCE WITH LABOR NEGOTIATORS REGARDING UNREPRESENTED EMPLOYEE (pursuant to Government Code §54957.6(a))

Agency Designated Representatives: Juan Gonzalez and Joseph D. Hughes;  
Unrepresented Employee: Chief Executive Officer

TRUSTEE RICK KRATT LEFT AT 11:55 A.M.

### **RETURN TO PUBLIC SESSION**

BOARD OF RETIREMENT RECONVENED AT 12:02 P.M.

### **ROLL CALL**

Present: Adams, Contreras, Couch, Franey, Gonzalez, Hughes, Kaufman, Nunneley, Seibly, Whitezell

Absent: Kratt

### **REPORT OF EXECUTIVE SESSION ACTIONS, IF APPLICABLE**

ITEM 32 – NO REPORTABLE ACTION

### **REFERRALS TO STAFF, ANNOUNCEMENTS OR REPORTS**

33. On their own initiative, Board members may make a brief announcement, refer matters to staff, subject to KCERA's rules and procedures, or make a brief report on their own activities – CHAIR TYLER WHITEZELL HEARD; CHIEF LEGAL OFFICER JENNIFER ZAHRY HEARD

**NEW BUSINESS**

34. Consider, discuss, and take possible action to agendaize one or more items for future meetings of the Board of Retirement – VICE-CHAIR PHIL FRANEY HEARD; TRUSTEE JEANINE ADAMS

REFERRAL TO STAFF TO BRING AB 2449 PROCEDURES DISCUSSION TO ADMINISTRATIVE COMMITTEE FOR FURTHER INFORMATION AND CONSIDERATION

**Franey-Gonzalez – 8 Ayes**

REFERRAL TO STAFF TO BRING EDUCATION REGARDING PROXY VOTING BACK TO THE BOARD OF RETIREMENT

**Gonzalez-Couch – 8 Ayes**

35. ADJOURNED – 12:10 P.M.

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Secretary, Board of Retirement

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Chair, Board of Retirement





**Kern County Employees' Retirement Association  
New Retirees- February 1, 2023 to February 28, 2023**

**Employer Name: County Of Kern**

<b>Member Last Name</b>	<b>Member First Name</b>	<b>Retirement Date</b>	<b>Membership Tier</b>	<b>Department Name</b>
Agosta	Mario	01/14/2023	Safety Tier I	2415S - Fire
Bates	Scott	12/31/2022	General Tier I	2415 - Fire
Beattie	Cara	01/28/2023	General Tier I	4120 - Behavioral Health & Reco
Bedard	Mary	01/03/2023	General Tier I	1110 - Auditor-Controller
Caldas	Herman	12/31/2022	Safety Tier II	2180S - District Attorney
Carrillo	Rosalinda	12/31/2022	General Tier I	2340 - Probation-Safety
Casabar	Jaime	12/31/2022	Safety Tier I	2340S - Probation-Safety
Evans	Steven	12/31/2022	General Tier I	5120 - Depart Of Human Services
Felix	Leonora	01/14/2023	General Tier I	5120 - Depart Of Human Services
Fontaine	Rose Ann	12/31/2022	General Tier I	2183 - Dept Of Child Support Svc
Hagar	Rebecca	01/14/2023	General Tier I	5120 - Depart Of Human Services
Jauch	Douglas	01/07/2023	Safety Tier I	2210S - Sheriff
Johnson	Scott	01/07/2023	General Tier I	2180 - District Attorney
Kumar	Gyan	01/14/2023	General Tier I	2340 - Probation-Safety
Lubatti	Florlyn	12/31/2022	General Tier II	5940 - Community & Econ Dev Dept
Maggard	William	01/03/2023	General Tier I	1013 - Board Of Supv-District 3
Miarta	Richard	01/07/2023	Safety Tier I	2210S - Sheriff



**Kern County Employees' Retirement Association  
New Retirees- February 1, 2023 to February 28, 2023**

<b>Member Last Name</b>	<b>Member First Name</b>	<b>Retirement Date</b>	<b>Membership Tier</b>	<b>Department Name</b>
Neira	Aaron	12/31/2022	General Tier I	2210 - Sheriff
Southerland	Trudy	01/14/2023	General Tier I	2210 - Sheriff
Veon	James	01/14/2023	Safety Tier I	2210S - Sheriff
Vigil	Cecelia	01/19/2023	General Tier I	5120 - Depart Of Human Services
Watson	Steve	02/08/2003	General Tier LGT .14	8997 - Kern Medical Center

**Employer Name: KC Superior Court**

<b>Member Last Name</b>	<b>Member First Name</b>	<b>Retirement Date</b>	<b>Membership Tier</b>	<b>Department Name</b>
Haislip	Rafaela	01/31/2023	General Tier I	9445A - Judges and Courtroom Suppt

**Employer Name: Kern County Hospital Authority**

<b>Member Last Name</b>	<b>Member First Name</b>	<b>Retirement Date</b>	<b>Membership Tier</b>	<b>Department Name</b>
Piercy	John	01/09/2023	General Tier I	9460 - Kern County Hospital Authority

**Employer Name: Kern County Water Agency**

<b>Member Last Name</b>	<b>Member First Name</b>	<b>Retirement Date</b>	<b>Membership Tier</b>	<b>Department Name</b>
Melton	Holly	01/14/2023	General Tier I	0957 - Administrative Operations

**Employer Name: San Joaquin Valley APCD**

<b>Member Last Name</b>	<b>Member First Name</b>	<b>Retirement Date</b>	<b>Membership Tier</b>	<b>Department Name</b>
Martinez	Inginia	12/31/2022	General Tier I	0959 - San Joaquin Valley Air Pollution Control District



## Kern County Employees' Retirement Association Decedents- February 1, 2023 to February 28, 2023

### Post-Retirement Deaths

Last Name	First Name	Membership Type	Employer Name
Brink	Daniel	General	County Of Kern
Brown	Charlene	General	County Of Kern
Curry	Ophelia	General	County Of Kern
Davis	Garry	Safety	County Of Kern
Gregory	Elo	General	County Of Kern
Henning	Arthur	General	County Of Kern
Hernandez	Beatrice	General	County Of Kern
Joe	Lucy	General	County Of Kern
Leopold	Lynda	General	Shafter Rec & Park Dist
Rhea-Wilhelmsen	Maudie	General	KC Superior Court
Sepulveda	Jesus	General	County Of Kern
Victory	Janie	General	County Of Kern
Wass	Howard	Safety	County Of Kern

**KCERA  
STATUS OF DISABILITY RETIREMENT APPLICATIONS  
AS OF 2/28/2023**

<b>NAME</b>	<b>DEPARTMENT</b>	<b>DATE FILED</b>	<b>DATE OF LAST CONTACT</b>
Mierta, Richard	SHERIFF	02/10/23	02/27/23
Ramirez, Edward	SHERIFF	02/07/23	02/27/23
Lock, Ranna	SHERIFF	02/01/23	02/27/23
Harbour, Leslie	SHERIFF	02/09/23	02/27/23
Inman Ferguson, Jill	SUPERIOR COURT	01/24/23	01/27/23
Monahan, Laura	ENGINEERING & GROUNDWATER SERVICES	01/03/23	01/13/23
Kimbrell, Tamara	SHERIFF	11/29/22	01/13/23
Schmidt, Mark	FIRE	10/26/22	12/02/22
<b>NAME</b>	<b>DEPARTMENT</b>	<b>DATE FILED</b>	<b>MMRO ASSIGNED</b>
Dunlap, James	SHERIFF	11/01/22	02/08/23
Perez, Manuelita	PROBATION	10/27/22	01/17/23
Yanez, Alfred	SHERIFF	10/03/22	02/12/22
Morrison, James	SHERIFF	09/14/22	12/19/22
Gregory, Dolores	SHERIFF	08/16/22	12/19/22
Smith, Clifton	FIRE	08/15/22	12/19/22
Cockrell, June	DEPT OF HUMAN SERVICES	08/11/22	10/18/22
Gaetzman, Travis	SHERIFF	08/10/22	11/22/22
Hartley-Anders, Kim	SUPERIOR COURT	08/09/22	11/22/22
Hudson, Richard	SHERIFF	08/08/22	11/22/22
Carrillo, Aaron	SHERIFF	07/15/22	09/30/22
Rice, Jerry	FIRE	07/07/22	11/22/22
Roden, Jim	SHERIFF	06/22/22	09/30/22
Rodriguez, Mark	FIRE	06/21/22	09/01/22
Fecke, Daniel	HOSPITAL AUTHORITY	06/15/22	09/30/22
Pena, Armando	PROBATION	05/27/22	09/19/22
Hill, Sheldon	SHERIFF	05/27/22	08/19/22
Gomez, Armando	ITS	04/29/22	10/14/22
Cano, Emma	BEHAVIORAL HEALTH & RECOVERY SERVICES	03/17/22	08/19/22
Barnes, Mark	SHERIFF	12/03/21	07/21/22
Yohn, Jacob	SHERIFF	11/30/21	07/21/22
Fussel, Kathy	HOSPITAL AUTHORITY	11/03/21	02/24/22
Guandique, Sandra	RISK MANAGEMENT	10/15/21	03/14/22
Kauffman, Stephen	DISTRICT ATTORNEY	08/16/21	04/25/22
Gardner, Stephen	FIRE	07/19/21	02/24/22
Brannan, Derek	SHERIFF	07/14/21	11/22/21
Leon, Theresa	DEPARTMENT OF HUMAN SERVICES	07/07/21	10/18/21
Patton, Eric	SHERIFF	06/30/21	11/22/21

**KCERA  
STATUS OF DISABILITY RETIREMENT APPLICATIONS  
AS OF 2/28/2023**

<b>NAME</b>	<b>DEPARTMENT</b>	<b>DATE FILED</b>	<b>MMRO ASSIGNED</b>
Candelaria, Valerie	HUMAN SERVICES	06/23/21	09/15/21
Introini, Jessica	SHERIFF	06/18/21	11/22/21
Williams, Theron	GENERAL SERVICES DIVISION	05/12/21	09/15/21
Garcia, Judy	KERN HOSPITAL AUTHORITY	03/29/21	10/18/21
Smith, Thomas Jr.	SHERIFF	03/16/21	11/08/21
Brandon, Bradly	SHERIFF	03/04/21	08/20/21
Bravo, Enrique	SHERIFF	03/01/21	08/20/21
Sanders-Stubblefield, Misty	AGING AND ADULT SERVICES	02/25/21	08/20/21
McAdoo, John	SHERIFF	02/24/21	08/20/21
Bankston, Josh	SHERIFF	02/09/21	08/19/21
Cushman, Harris	SHERIFF	12/22/20	08/19/21
Carrillo, Mabelle	ANIMAL CONTROL	11/18/20	04/21/21
Burchfield, James	PUBLIC WORKS	11/17/20	07/16/21
Tisinger, Douglas	KERN COUNTY WATER AGENCY	10/05/20	05/21/21
Fleeman, Justin	SHERIFF	09/17/20	02/08/21
Diffenbaugh, Anthony	FIRE	06/11/20	04/26/21
Brown, Michael	SHERIFF	04/14/20	08/31/20
Baker, Breanne	HUMAN SERVICES	04/02/20	09/29/20
Terry, Leann	SHERIFF	10/17/19	06/30/20
Martinez de Moore, Brenda	KERN BEHAVIORAL HEALTH AND RECOVERY SERVICES	12/10/18	09/08/20
Champlin, Timothy	PROBATION	04/25/18	05/21/20
Hulsey, Jonathan	PROBATION	04/18/18	04/22/20
Coletti, John	SHERIFF	01/30/18	05/20/20
Rodriquez, Ted	SHERIFF	06/22/17	02/20/20
Carvel, Scott	DISTRICT ATTORNEY	01/27/17	11/05/19
<b>COMPLETED IN 2023</b>			
<b>NAME</b>	<b>DEPARTMENT</b>	<b>FILED</b>	<b>DATE COMPLETED</b>

**KCERA  
DISABILITY RETIREMENT APPLICATION APPEALS PENDING  
AS OF 2/28/23**

ADMINISTRATIVE HEARING	DEPARTMENT	DATE FILED	SDAG RECOMMENDATION	APPEAL RECEIVED	HEARING OFFICER ASSIGNED	STATUS
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WRIT OF MANDATE	DEPARTMENT	DATE FILED	BOARD DECISION	PETITION FOR WRIT FILED	STATUS
Ashley, Mark	SHERIFF	09/03/15	Board denied SCD and granted NSCD 9/8/2021	12/8/2021	Trial 12/9/2022; Waiting for Judgment

COURT OF APPEAL	DEPARTMENT	DATE FILED	BOARD DECISION	PETITION FOR WRIT FILED	JUDGMENT ON WRIT	NOTICE OF APPEAL RECEIVED	STATUS
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HEARINGS COMPLETED IN 2023			
NAME	DEPARTMENT	DATE FILED	DATE COMPLETED
Morgan, Gloria	SHERIFF	03/26/15	02/24/23

# SECURITIES LENDING

## Summary Earnings Report

**Run Time:** 08-Feb-2023 12:42 EST  
**Date Range:** 01-JAN-2023 To 31-JAN-2023  
**Location:** Not specified  
**Currency:** USD  
**Client ID:** Not Specified  
**Master Client:** CAKERN  
**Grouping Type:** None  
**Level:** Individually

	Client ID	Average Contract Amount	Gross Earnings	DB Earnings	Client Earnings	Custody Account
KNCTY - Harvest Midstream	CAKE18	8,393,578.76	5,639.37	563.94	5,075.44	KNC15
KNCTY - PIMCO Midstream	CAKE19	27,790,008.51	11,483.02	1,148.30	10,334.72	KNC16
KNCTY PIMCO Core Plus	CAKE07	26,477,045.09	5,616.20	561.62	5,054.58	KNC11
KNCTY PIMCO EMD	CAKE08	1,061,659.81	609.48	60.95	548.53	KNC12
KNTCY - Alliance Bernstein	CAKE15	20,294,191.00	11,632.48	1,163.25	10,469.23	2664130
KNTCY - Geneva	CAKE16	19,108,166.69	4,979.83	497.98	4,481.85	2667336
KNTCY - Western Asset MGMT Co 01	CAKE03	10,723,938.55	4,778.10	477.81	4,300.29	KNC06
KNTCY - Western Asset MGMT Co 02	CAKE04	45,154,599.24	24,602.00	2,460.20	22,141.80	KNC08
<b>CCY Total USD:</b>		<b>159,003,187.63</b>	<b>69,340.49</b>	<b>6,934.05</b>	<b>62,406.44</b>	
<b>Grand Total USD:</b>			<b>69,340.49</b>	<b>6,934.05</b>	<b>62,406.44</b>	

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**KCERA ASSET ALLOCATION\***  
1/31/2023

Manager Name	Type	\$(000)	Current Allocation	Target Percentage	Variance Over Target (Under Target)	Variance Over Target (Under Target) \$(000)
AllianceBernstein	Small Cap Value	94,248	1.8%			
Geneva Capital	Small Cap Growth	50,690	1.0%			
Mellon Capital Management EB DV	Large Cap Passive	487,244	9.2%			
PIMCO StockPlus	Large Cap Enhanced	106,380	2.0%			
<b>Total Domestic Equity</b>		<b>\$738,562</b>	<b>13.9%</b>	<b>19.0%</b>	<b>(5.1%)</b>	<b>(\$267,701)</b>
American Century	International Small	68,890	1.3%			
Cevian Capital II LP	International Large	36,924	0.7%			
Mellon Capital Management-EB DV	International Large Passive	510,214	9.6%			
<b>Total International Developed Equity</b>		<b>\$616,028</b>	<b>11.6%</b>	<b>13.0%</b>	<b>(1.4%)</b>	<b>(\$72,468)</b>
AB Emerging Markets Strategic Core	Emerging Markets	51,941	1.0%			
DFA Emerging Markets Value Portfolio	Emerging Markets	80,217	1.5%			
Mellon Emerging Markets	Emerging Markets	86,829	1.6%			
<b>Total Emerging Market Equity</b>		<b>\$218,987</b>	<b>4.1%</b>	<b>5.0%</b>	<b>(0.9%)</b>	<b>(\$45,819)</b>
<b>TOTAL EQUITY</b>		<b>\$1,573,577</b>	<b>29.7%</b>	<b>37.0%</b>	<b>(7.3%)</b>	<b>(\$385,988)</b>
Mellon Capital Management Ag Bond	Core	162,576	3.1%			
PIMCO CP	Core Plus	165,584	3.1%			
Western Asset Management - CP	Core Plus	123,935	2.3%			
<b>Total Core</b>		<b>\$452,095</b>	<b>8.5%</b>	<b>14.0%</b>	<b>(5.5%)</b>	<b>(\$289,362)</b>
TCW Securitized Opportunities LP	Securitized Opportunities	96,092	1.8%			
Western Asset Management - HY	High Yield	168,358	3.2%			
<b>Total Credit</b>		<b>\$264,450</b>	<b>5.0%</b>	<b>6.0%</b>	<b>(1.0%)</b>	<b>(\$53,317)</b>
PIMCO EM Beta	Emerging Markets	143,512	2.7%			
Stone Harbor Global Funds	Emerging Markets	66,355	1.3%			
<b>Total Emerging Market Debt</b>		<b>\$209,867</b>	<b>4.0%</b>	<b>4.0%</b>	<b>(0.0%)</b>	<b>(\$1,978)</b>
<b>TOTAL FIXED INCOME</b>		<b>\$926,412</b>	<b>17.5%</b>	<b>24.0%</b>	<b>(6.5%)</b>	<b>(\$344,657)</b>
Gresham Commodity Builder Fund	Active	51,719	1.0%			
Wellington Trust Company (WTC)	Active	158,453	3.0%			
<b>TOTAL COMMODITIES</b>		<b>\$210,172</b>	<b>4.0%</b>	<b>4.0%</b>	<b>(0.0%)</b>	<b>(\$1,673)</b>
Aristeia International Ltd	Hedge Fund - Direct	68,181	1.3%			
Brevarn Howard Fund Limited	Hedge Fund - Direct	67,792	1.3%			
D.E. Shaw Composite Fund	Hedge Fund - Direct	58,857	1.1%			
HBK Multi-Strategy Fund	Hedge Fund - Direct	32,250	0.6%			
Hudson Bay Enhanced Fund LP	Hedge Fund - Direct	81,110	1.5%			
Indus Pacific Opportunities Fund	Hedge Fund - Direct	38,043	0.7%			
Magnetar Structured Credit Fund	Hedge Fund - Direct	7,260	0.1%			
PIMCO Commodity Alpha Fund LLC	Hedge Fund - Direct	64,477	1.2%			
Pharo Macro Fund LTD	Hedge Fund - Direct	62,282	1.2%			
Sculptor Enhanced LP (Formerly OZ Domestic)	Hedge Fund - Direct	45,599	0.9%			
<b>TOTAL HEDGE FUND</b>		<b>\$525,851</b>	<b>9.9%</b>	<b>10.0%</b>	<b>(0.1%)</b>	<b>(\$3,761)</b>
ASB Capital Management	Core	185,796	3.5%			
JPMCB Strategic Property Fund	Core	148,271	2.8%			
<b>TOTAL CORE REAL ESTATE</b>		<b>\$334,067</b>	<b>6.3%</b>	<b>5.0%</b>	<b>1.3%</b>	<b>\$69,261</b>
Davidson Kempner	Hedge Fund - Direct	54,247	1.0%			
Garda Fixed Income	Hedge Fund - Direct	56,160	1.1%			
HBK Multi-Strategy Fund	Hedge Fund - Direct	54,395	1.0%			
HBK Spac Fund	Hedge Fund - Direct	24,842	0.5%			
Hudson Bay Enhanced Fund LP	Hedge Fund - Direct	60,845	1.1%			
<b>TOTAL CE ALPHA POOL</b>		<b>\$250,489</b>	<b>4.7%</b>	<b>5.0%</b>	<b>(0.3%)</b>	<b>(\$14,317)</b>
Harvest Midstream	Midstream	159,790	3.0%			
PIMCO Midstream	Midstream	153,133	2.9%			
<b>TOTAL MIDSTREAM ENERGY</b>		<b>\$312,923</b>	<b>5.9%</b>	<b>5.0%</b>	<b>0.9%</b>	<b>\$48,117</b>
Aristeia Select Opportunities II LP	Opportunistic	48,693	0.9%			
DB Investor's Fund IV	Opportunistic	26,485	0.5%			
River Birch International Ltd	Opportunistic	5,982	0.1%			
Sixth Street TAO Partners (D)	Opportunistic	90,905	1.7%			
<b>TOTAL OPPORTUNISTIC</b>		<b>\$172,045</b>	<b>3.2%</b>	<b>0.0%</b>	<b>3.2%</b>	<b>\$172,045</b>
Abbott Capital Funds	Private Equity Fund of Funds	21,809	0.4%			
Blue Torch Credit Opportunities Fund III	Private Equity	7,389	0.1%			
Brighton Park Capital Fund I	Private Equity	34,229	0.6%			
Brighton Park Capital Fund II	Private Equity	2,349	0.0%			
Level Equity Growth Partners	Private Equity	7,250	0.1%			
LGT Crown Global	Private Equity	24,983	0.5%			
Linden Capital Partners	Private Equity	6,985	0.1%			
Pantheon Funds	Private Equity Fund of Funds	8,853	0.2%			
Peak Rock	Private Equity	10,458	0.2%			
Rubicon Technology Partners IV	Private Equity	3,214	0.1%			
Vista Foundation Fund IV	Private Equity	17,968	0.3%			
Warren Equity Partners Fund III and Fund IV	Private Equity	30,808	0.6%			
<b>TOTAL PRIVATE EQUITY</b>		<b>\$176,295</b>	<b>3.3%</b>	<b>5.0%</b>	<b>(1.7%)</b>	<b>(\$88,511)</b>
Blue Torch Credit Opportunitites II	Private Credit	17,089	0.3%			
Brookfield Real Estate Finance Fund V	Private Credit	18,930	0.4%			
Colony Distressed Credit Fund	Private Credit	18,822	0.4%			
Fortress Credit Opportunities Fund V	Private Credit	13,921	0.3%			
Fortress Lending Fund II (A)	Private Credit	27,287	0.5%			
Fortress Lending Fund III (A)	Private Credit	22,532	0.4%			
H.I.G. Bayside Loan Opportunity Fund	Private Credit	39,898	0.8%			
Magnetar Constellation Fund V	Private Credit	30,349	0.6%			
OrbiMed Royalty & Credit Opportunities IV & IX	Private Credit	4,928	0.1%			
Sixth Street TAO Partners (B)	Private Credit	38,660	0.7%			
<b>TOTAL PRIVATE CREDIT</b>		<b>\$232,416</b>	<b>4.4%</b>	<b>5.0%</b>	<b>(0.6%)</b>	<b>(\$32,390)</b>
Covenant Apartment Fund X	Private Real Estate	31,221	0.6%			
Covenant Apartment Fund XI	Private Real Estate	4,559	0.1%			
Invesco Real Estate Funds III & IV	Private Real Estate	1,394	0.0%			
KCERA Property	Private Real Estate	4,629	0.1%			
LBA Logistics Value Fund IX	Private Real Estate	7,574	0.1%			
Landmark Real Estate Partners VIII	Private Real Estate	32,029	0.6%			
Long Wharf Real Estate Partners VI	Private Real Estate	29,861	0.6%			
Singerman Real Estate Opportunity Fund IV	Private Real Estate	8,115	0.2%			
<b>TOTAL PRIVATE REAL ESTATE</b>		<b>\$119,382</b>	<b>2.3%</b>	<b>5.0%</b>	<b>(2.7%)</b>	<b>(\$145,424)</b>
Northern Trust STIF	Short Term	201,663	3.8%			
BlackRock Short Duration	Short Term	151,707	2.9%			
Parametric	Overlay	94,792	1.8%			
Treasurers Pooled Cash	Short Term	11,547	0.2%			
Wells Fargo Bank	Short Term	2,463	0.0%			
<b>TOTAL CASH AND OVERLAY</b>		<b>\$462,172</b>	<b>8.7%</b>	<b>-5.0%</b>	<b>13.7%</b>	<b>\$726,978</b>
Transition Accounts	Liquidation	320	0.0%			
<b>Other</b>		<b>\$320</b>	<b>0.0%</b>	<b>0.0%</b>	<b>0.0%</b>	<b>\$320</b>
<b>As Allocated to Managers **</b>		<b>\$5,296,121</b>	<b>100.0%</b>	<b>100.0%</b>	<b>(0.0%)</b>	<b>(\$0)</b>

\*This report reflects the strategic asset allocation policy adopted by the Board of Retirement April 2022.

\*\*Physical securities market value only. Does not include notional market values of the overlay or capital efficiency program



**KCERA**  
**CASH FLOW POSITION**  
**JANUARY, 2023**  
**TREASURERS POOLED CASH**

<b>Beginning Cash Balance:</b>		<b>\$</b>	<b>950,276</b>
Employer Contributions	35,422,132		
Employee Contributions	5,032,358		
Service Purchases	57,052		
Miscellaneous	4,721		
<b>Total Receipts:</b>			<b>40,516,263</b>
Operating Expenses	(523,939)		
Investment Expenses	(895,327)		
Transfers-out	(28,500,000)		
<b>Total Disbursements:</b>			<b>(29,919,266)</b>
<b>Ending Cash Balance:</b>			<b>11,547,273</b>

**NORTHERN TRUST**

<b>Beginning Cash Balance:</b>		<b>\$</b>	<b>155,741,195</b>
Private Markets - Distributions	9,313,903		
Commingled Funds - Distributions	1,411,439		
Hedge Funds - Distributions	5,431,680		
Redemption      Brevan Howard	8,092,704		
Redemption      HBK	33,052,871		
Redemption      River Birch	2,736,428		
Redemption      ASB	1,455,254		
Dividend and Interest Income	1,549,177		
Tax Recovery	42,989		
Class Action Proceeds	21		
Interest	513,280		
Securities Lending Earnings (NET)	61,428		
<b>Total Receipts:</b>			<b>63,661,174</b>
Capital Calls      Covenant	(1,200,000)		
Capital Calls      Warren Equity	(5,146,048)		
Capital Calls      Vista	(4,563,716)		
Capital Calls      H.I.G. Bayside	(2,324,993)		
Capital Calls      Singerman	(131,250)		
Capital Calls      Level Equity	(380,516)		
Other Expenses	(11,906)		
Transfers-out	(7,000,000)		
<b>Total Disbursements:</b>			<b>(20,758,430)</b>
<b>Ending Cash Balance:</b>		<b>\$</b>	<b>198,643,939</b>

**KCERA  
CASH FLOW POSITION  
JANUARY, 2023**

**WELLS FARGO BANK**

<b>Beginning Cash Balance</b>		<b>\$ 1,455,595</b>
Transfer In Northern Trust	7,000,000	
Transfer In TPC - County	28,500,000	
ACH Returns / Deletes	112,267	
<b>Total Receipts:</b>		<b>35,612,267</b>
ACH Benefit Payments	(30,260,979)	
Total Checks Paid	(143,852)	
Taxes Withholding Deposits	(4,199,502)	
Bank Services	(549)	
<b>Total Disbursements:</b>		<b>(34,604,882)</b>
<b>WFB ending Balance</b>		<b><u>\$ 2,462,980</u></b>

**KERN COUNTY EMPLOYEES' RETIREMENT ASSOCIATION  
INVESTMENT FEES CASH FLOW REPORT  
FOR THE MONTH ENDED JANUARY, 2023**

Description	July	August	September	October	November	December	January	Total
<b>Investment Base Fees:</b>								
Domestic Equity:								
AllianceBernstein				136,722.65			150,695.87	287,418.52
Henderson Geneva Capital				88,266.00				88,266.00
Mellon Capital				52,344.44			60,651.70	112,996.14
International Equity:								
BlackRock							67,463.92	67,463.92
Fidelity Institutional Asset Management								0.00
Fixed Income:								
Mellon Capital (Ag Bond)				10,917.00			11,042.85	21,959.85
Pacific Investment Management Company		280,932.77			279,097.65			560,030.42
Western Asset Management		210,204.72			197,600.56		162,994.65	570,799.93
Commodities:								
Wellington Trust Company								0.00
Real Estate:								
ASB Capital Management		374,856.86			383,045.97			757,902.83
Midstream Energy:								
Harvest Midstream				366,080.72			335,618.05	701,698.77
Overlay								
Parametric		67,965.00			77,590.00			145,555.00
<b>Subtotal</b>	<b>0.00</b>	<b>933,959.35</b>	<b>0.00</b>	<b>654,330.81</b>	<b>937,334.18</b>	<b>0.00</b>	<b>788,467.04</b>	<b>3,314,091.38</b>
<b>Investment Professional Fees:</b>								
Consulting:								
Abel Noser			7,500.00			7,500.00	7,500.00	22,500.00
Albourne America LLC		33,333.33	33,333.33	33,333.33		46,283.33	33,333.33	179,616.65
Cambridge Associates				187,500.00		187,500.00		375,000.00
Glass, Lewis & Co.								0.00
Verus		34,166.67	34,166.67	34,166.67	34,166.67	34,166.67	34,166.67	205,000.02
Consulting - Other Expenses							9,360.00	9,360.00
Custodial:								
The Northern Trust Co.			120,000.00					120,000.00
Legal:								
Foley & Lardner LLP								0.00
Hanson Bridgett LLP								0.00
Nossaman LLP	25,980.00						22,500.00	48,480.00
Due Diligence / Investment-Related Travel:								
<b>Subtotal</b>	<b>25,980.00</b>	<b>67,500.00</b>	<b>195,000.00</b>	<b>255,000.00</b>	<b>34,166.67</b>	<b>275,450.00</b>	<b>106,860.00</b>	<b>959,956.67</b>
<b>Total Investment Fees</b>	<b>25,980.00</b>	<b>1,001,459.35</b>	<b>195,000.00</b>	<b>909,330.81</b>	<b>971,500.85</b>	<b>275,450.00</b>	<b>895,327.04</b>	<b>4,274,048.05</b>


**KCERA**  
**Operating Expense Budget Status Report**  
**For the Month Ended January 31, 2023**

Expense Type	Budget FY 2022/23	Expenses	Over (Under)
<b>Staffing</b>			
Salaries	3,724,357.00	1,698,903.89	(2,025,453.11)
Benefits	2,410,676.00	\$986,231.11	(1,424,444.89)
<b>Staffing Total</b>	<b>6,135,033.00</b>	<b>2,685,135.00</b>	<b>(3,449,898.00)</b>
<b>Staff Development</b>			
Education & Professional Development	90,000.00	46,270.90	(43,729.10)
Staff Appreciation	3,000.00	2,235.15	(764.85)
<b>Staff Development Total</b>	<b>93,000.00</b>	<b>48,506.05</b>	<b>(44,493.95)</b>
<b>Professional Fees</b>			
Actuarial fees	140,000.00	15,006.00	(124,994.00)
Audit fees	50,500.00	33,600.00	(16,900.00)
Consultant fees	115,000.00	20,000.00	(95,000.00)
Legal fees	80,000.00	25,212.51	(54,787.49)
<b>Professional Fees Total</b>	<b>385,500.00</b>	<b>93,818.51</b>	<b>(291,681.49)</b>
<b>Office Expenses</b>			
Building expenses	115,000.00	65,500.21	(49,499.79)
Communications	52,770.00	16,132.64	(36,637.36)
Equipment lease	9,600.00	4,307.45	(5,292.55)
Equipment maintenance	7,178.00	2,000.00	(5,178.00)
Memberships	20,000.00	7,665.00	(12,335.00)
Office supplies & misc. admin.	68,300.00	18,984.49	(49,315.51)
Payroll & accounts payable fees	27,800.00	6,738.41	(21,061.59)
Other Services - Kern County	40,000.00	-	(40,000.00)
Postage	20,000.00	6,817.46	(13,182.54)
Subscriptions	13,733.00	6,963.13	(6,769.87)
Utilities	30,000.00	26,918.13	(3,081.87)
<b>Office Expense Total</b>	<b>404,381.00</b>	<b>162,026.92</b>	<b>(242,354.08)</b>
<b>Insurance</b>	<b>160,595.00</b>	<b>156,210.00</b>	<b>(4,385.00)</b>
<b>Member Services</b>			
Disability - legal fees	10,000.00	-	(10,000.00)
Disability - professional services	20,000.00	-	(20,000.00)
Disability - administration MMRO	140,000.00	27,525.00	(112,475.00)
Member communications	20,000.00	11,463.64	(8,536.36)
<b>Member Services Total</b>	<b>190,000.00</b>	<b>38,988.64</b>	<b>(151,011.36)</b>
<b>Systems</b>			
Audit – security & vulnerability scan	15,000.00	13,750.00	(1,250.00)
Business continuity expenses	23,850.00	16,934.33	(6,915.67)
Hardware	48,453.00	2,551.18	(45,901.82)
Licensing & support	148,413.00	118,932.87	(29,480.13)
Software	164,229.00	118,086.01	(46,142.99)
Website design & hosting	85,695.00	8,090.00	(77,605.00)
<b>Systems Total</b>	<b>485,640.00</b>	<b>278,344.39</b>	<b>(207,295.61)</b>
<b>Board of Retirement</b>			
Board compensation	12,000.00	4,500.00	(7,500.00)
Board conferences & training	50,000.00	16,235.89	(33,764.11)
Board elections	50,000.00	-	(50,000.00)
Board meetings	5,000.00	1,572.63	(3,427.37)
<b>Board of Retirement Total</b>	<b>117,000.00</b>	<b>22,308.52</b>	<b>(94,691.48)</b>
<b>Depreciation / Amortization</b>	<b>666,471.00</b>	<b>378,680.40</b>	<b>(287,790.60)</b>
<b>Total Operating Expenses</b>	<b>8,637,620.00</b>	<b>3,864,018.43</b>	<b>(4,773,601.57)</b>



KERN COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

Memorandum from the  
Office of the Chief Executive Officer  
*Dominic D. Brown*

**Date:** March 8, 2023  
**To:** Trustees, Board of Retirement  
**From:** Dominic D. Brown, Chief Executive Officer   
**Subject:** **CALAPRS Advanced Principles of Pension Governance for Trustees  
Los Angeles, California  
March 29-31, 2023**

In accordance with the Travel Policy approved by the Board of Retirement on August 11, 2021, I have attached information concerning the above-captioned conference, as follows:

- Agenda and supporting information on the pertinence and relevance of attendance to a fiduciary – Preliminary agenda is attached
- Specific information as to whether staff or members of the Board will serve as a speaker or panel participant – None
- Specific information concerning the estimated total travel cost involved, including the estimated costs to be borne by KCERA and those costs borne by the conference sponsor

The topic list is timely and relevant to the administration of the retirement system. Accordingly, I recommend that the Board approve the attendance of Trustees Dustin Contreras and Tyler Whitezell.

Attachments

<b>Travel Subject</b>	CALAPRS Advanced Principles of Pension Governance for Trustees
<b>Sponsor</b>	CALAPRS
<b>Date(s)</b>	March 29-31, 2023
<b>Location</b>	Los Angeles, CA
<b>Proposed Attendee(s)</b>	Contreras, Whitezell

**Estimated Total Travel Cost** **\$7,098.17**

Description	Computation		Contereas	Whitezell	Totals	Borne By	
						KCERA	Sponsor
Registration fees	\$3,250.00	=	3,250.00	3,250.00	<b>6,500.00</b>	6,500.00	
Lodging expense	2 nights @ - /night	=			-	-	
Per diem meals reimbursement:	3 days @ \$ 74.00 /day	=	222.00	222.00			
Less meals provided by sponsor	2 Breakfast, 2 Lunch, 2 Dinner = \$148.00	=	(\$148.00)	(\$148.00)			\$296.00
Total meals expense		=			<b>444.00</b>	148.00	
Shuttle/taxicab expense	Taxi Estimate	=					
Airfare	\$0.00	=	\$0.00	\$0.00	<b>\$0.00</b>	-	
Vehicle-related expenses:		=	-	-	-	-	
Parking	3 days @ 10.00 /day	=	30.00	30.00	<b>30.00</b>	30.00	
Mileage	214 miles @ 0.370 /mile (Department Head)	=			-	-	
	214 miles @ 0.655 /mile (Staff, Trustee)	=		140.17	<b>140.17</b>	140.17	
Rental car		=	180.00	-	<b>180.00</b>	180.00	
Rental car gasoline		=	100.00	-	<b>100.00</b>	100.00	
<b>Totals</b>		=	<b>3,634.00</b>	<b>3,494.17</b>	<b>\$ 7,394.17</b>	<b>\$ 7,098.17</b>	<b>\$ 296.00</b>

March 29 – 31, 2023

**PROGRAM SCHEDULE**

**LOCATION:** UCLA Luskin Conference Center, 425 Westwood Plaza, Los Angeles, CA

<b>WEDNESDAY, MARCH 29</b>	
3:00 – 5:30 PM	Check-in at UCLA Luskin Center
5:30 – 6:00 PM	<b><i>Welcome &amp; Networking Reception</i></b> <b>Mark Hovey</b> , Former Appointed Trustee, San Diego County Employees' Retirement Association / Retired CEO, San Diego City Employees' Retirement System
6:00 – 7:00 PM	Dinner
7:00 - 8:30 PM	<b><i>Effective Board Decision Making</i></b> <b>Mark Hovey</b>

<b>THURSDAY, MARCH 30</b>	
7:30 – 8:30 AM	Breakfast
8:30 – 10:30 AM	<b><i>Governance Risks . . . and Opportunities to Add Value (Part 1)</i></b> <b>Valter Viola</b> , President, Cortex Consultants <i>Turning great strategy into great performance is hard; that's why risk-conscious boards that focus on policy decisions can add value. Organizations typically have some "performance gaps," and pension plans are no different. We will explore and discuss the unique fiduciary, organizational, and other risks faced by pension plans and how to mitigate them through:</i> <ul style="list-style-type: none"> <li>• effective strategic and business planning practices; and</li> <li>• optimizing board and staff roles, accountabilities, and delegations of authority.</li> </ul>
10:30 AM	Break
11:00 - 12:00 PM	<b><i>Governance Risks . . . and Opportunities to Add Value (Part 2)</i></b>
12:00 PM	Lunch with Table Topics
1:00 - 2:45 PM	<b><i>Economics Update and Forecast</i></b> <b>Dr. Jerry Nickelsburg</b> , Faculty Director, UCLA Anderson Forecast Adjunct Professor of Economics, UCLA Anderson School of Management <i>The economy has changed significantly since the beginning of the COVID-19 pandemic. Consumer preferences including the type and size of housing have been altered. The U.S. is engaged in industrial policy with infrastructure, climate resiliency and key sector investments. The Federal Reserve is actively altering the interest rate landscape. And there are worries about inflation and recession among the business and household communities. How is it best to navigate these elevated uncertainties. We will discuss forecasting in altered states of the economy as well as the outlook for the U.S. and California from 2023 to 2025.</i>
2:45 – 3:00 PM	Break

3:00 – 4:15 PM	<p><b><i>Process is Prudence and Prudence is Process</i></b>  <b>Carina Coleman, CIO, San Diego City Employees' Retirement System</b>  <i>It is important to understand how integral a prudent investment process is to the fiduciary role you serve as a trustee of pension assets. With a vote that counts, you have the unique opportunity to shape the Plan's investment process. Oftentimes, the process undertaken to arrive at a decision is more important than the outcome itself when measuring fiduciary liability. Questions that fiduciaries grapple with on a daily basis include:</i></p> <ul style="list-style-type: none"> <li>• <i>Do we have the right mix of return seeking and risk mitigating assets?</i></li> <li>• <i>When there is so little visibility, how can we be sure that we have the right portfolio allocation?</i></li> <li>• <i>What about bitcoin [for the next biggest trend]? ...Are we missing the train?</i></li> <li>• <i>Do we invest actively or passively?</i></li> <li>• <i>What about costs?</i></li> </ul> <p><i>This presentation aims to address all of these concerns in a straightforward investment process framework to help fiduciaries' focus on what matters most.</i></p>
4:15 – 5:30 PM	<p><b><i>Understanding a Fiduciary's Role and Responsibilities on a Public Retirement System Board</i></b>  <b>Ashley K. Dunning, Partner, Co-Chair Public Pensions &amp; Investment Group, Nossaman LLP</b>  <i>Virtually every retirement system in California has a mix of members that are: 1) elected by active and or retired members; 2) appointed by the plan sponsor; and 3) sit ex officio by virtue of holding another public office, which is often elective. It's not uncommon for elected members to also be elected union officials. These "day jobs" come with their own responsibilities and associated stress as well as their own personal beliefs and values about what's best for the plan sponsor, the public at large and/or for a specific subset of retirement system stakeholders. It can be hard to keep these concerns from affecting decisions made as a public pension board member. We will discuss the different roles and responsibilities of fiduciaries, plan sponsors and advocates, and how retaining a clear eye as to a fiduciary's role and responsibilities, in contrast to other potential roles an individual may have in other contexts, assists Board members to act, and articulate the reasons for their actions, consistent with their fiduciary duties.</i></p>
6:00 – 6:30 PM	Cocktail Reception
6:30 PM	Dinner

<b>FRIDAY, MARCH 31</b>	
7:30 – 8:30 AM	Breakfast
8:30 -10:45 AM	<p><b><i>Advanced Actuarial Principles</i></b>  <b>Paul Angelo, Senior VP &amp; Actuary, Segal</b>  <b>Todd Tauzer, VP &amp; Actuary, Segal</b></p> <ul style="list-style-type: none"> <li>• <i>Focus on the two actuarial policy and decision areas for trustees: assumptions and funding policy</i></li> <li>• <i>Consider recent trends in public plan discount rates and why that topic is still controversial</i></li> <li>• <i>Review the three components of funding policy and then drill down on how to most effectively pay off the unfunded liability or manage any funding "surplus"</i></li> </ul>
10:45 – 11:00 AM	Break
11:00 -12:00 PM	<b><i>Governance Risks . . . and Opportunities to Add Value (Part 3)</i></b>
12:00 PM	Lunch
12:30 – 1:30 PM	<p><b><i>Tying It All Together: Questions, Take-Aways, Program Summary / Evaluation</i></b>  <b>Mark Hovey &amp; Valter Viola</b></p>
1:30 PM	Course Concludes





KERN COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

Memorandum from the  
Office of the Chief Executive Officer  
*Dominic D. Brown*

**Date:** March 8, 2023  
**To:** Trustees, Board of Retirement  
**From:** Dominic D. Brown, Chief Executive Officer   
**Subject: SACRS Board of Directors Meeting  
Sacramento, California  
March 20-21, 2023**

In accordance with the Travel Policy approved by the Board of Retirement on April 13, 2022, I have attached information concerning the above-captioned meeting, as follows:

- Specific information as to whether staff or members of the Board will serve as a participant – Jordan Kaufman
- Specific information concerning the estimated total travel cost involved, including the estimated costs to be borne by KCERA and those costs borne by the meeting sponsor

The meeting topics are relevant to the administration of the retirement system. Accordingly, I recommend that the Board approve the attendance of Trustee Jordan Kaufman.

Attachments

**Travel Subject** \_\_\_\_\_ SACRS Board of Directors Meeting  
**Sponsor** \_\_\_\_\_ SACRS  
**Date(s)** \_\_\_\_\_ March 20-21, 2023  
**Location** \_\_\_\_\_ Sacramento, CA  
**Proposed Attendee(s)** \_\_\_\_\_ Jordan Kaufman

**Estimated Total Travel Cost** \_\_\_\_\_ **\$850.99**

Description	Computation	Kaufman	Totals	Borne By	
				KCERA	Sponsor
Registration fees		= -	-	-	
Lodging expense	2 nights @ \$ 300.00 /night	= 600.00	<b>600.00</b>	600.00	
Per diem meals reimbursement:	2 days @ \$ 69.00 /day	= 138.00			
Less meals provided by sponsor	0 Breakfast, 2 Lunch, 2 Dinner = \$123.51	= (\$123.51)			\$123.51
Total meals expense		=	<b>138.00</b>	14.49	
Shuttle/taxicab expense	Taxi Estimate	=	-	-	
Airfare	\$0.00	= \$0.00	<b>\$0.00</b>	-	
Vehicle-related expenses:		=	-	-	
Parking	2 days @ 20.00 /day	= 40.00	<b>40.00</b>	40.00	
Mileage	miles @ /mile (Department Head)	= -	-	-	
	300 miles @ 0.655 /mile (Staff, Trustee)	= 196.50	<b>196.50</b>	196.50	
Rental car		= -	-	-	
Rental car gasoline		= -	-	-	
<b>Totals</b>		= 850.99	<b>\$ 974.50</b>	<b>\$ 850.99</b>	<b>\$ 123.51</b>



KERN COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

Memorandum from the  
Office of the Chief Executive Officer  
*Dominic D. Brown*

**Date:** March 8, 2023  
**To:** Trustees, Board of Retirement  
**From:** Dominic D. Brown, Chief Executive Officer *Dominic D. Brown*  
**Subject:** **Initiation of Service Provider Evaluation Period**

The Board of Retirement's Evaluation Period Policy was established to help ensure that decisions involving the selection, retention, or termination of KCERA service providers are consistent with fiduciary standards of conduct, and that service providers being considered by KCERA are treated fairly.

An "evaluation period" may be initiated by the Chief Executive Officer ("CEO") in the following situations:

- a) when a request for proposals (RFP) has been issued by KCERA or a short list of candidate firms has been identified for consideration by KCERA, or
- b) the Board otherwise deems it to be in the best interest of KCERA and its members and beneficiaries to do so.

The CEO has exercised his discretion and initiated the evaluation period for the following providers:

- 1) Parthenon Investors Fund VII
- 2) LGT Crown Global Secondaries Fund VI
- 3) RFP – Dedicated Long-Only Japan Equity Investment Strategy

Trustees are required to comply with the evaluation period restrictions upon receipt of this notification. (See Board Communications Policy).

During evaluation periods, trustees shall not communicate with the specified service providers, except during board meetings, committee meetings, or KCERA-authorized due diligence visits; nor shall they accept meals, travel, hotel, or other types of gifts from the specified service providers. Notwithstanding the above, Trustees who need to communicate with such service providers for reasons unrelated to KCERA business agree to disclose such need to the Board beforehand. If circumstances do not permit timely disclosure to the Board, the trustee shall provide disclosure of the intended communication to the CEO and to the Chair or Vice-Chair.

Initiation of Service Provider Evaluation Period

March 8, 2023

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Service providers that breach this policy may be terminated by KCERA or disqualified from consideration in a search process. Board members who breach this policy may be sanctioned in accordance with the KCERA Code of Conduct.

(See Evaluation Period Policy).

Pursuant to the aforementioned policies, staff recommends your Board ratify the evaluation period instituted by Chief Executive Officer Dominic Brown and delivered to the Board on February 28, 2023.

# SPECIAL PAY CODE – PENSIONABLE/ NON-PENSIONABLE

Dept./BU	Code	Title	Details	Legal Authority
SEIU, BU 1-6	LK	Deputy Coroner Training Officer  INCLUDED FOR LEGACY MEMBERS, EXCLUDED FOR PEPRA MEMBERS	Deputy Coroner Training Pay. Personnel in the Deputy Coroner or Supervising Deputy Coroner classifications serving as Deputy Coroner Training Officer shall receive assignment pay equal to 5% of their base pay. BOS approved 2/14/2023.  -SEIU MOU 12/14/2021-06/30/2024, Amendment #2, Article V, Section 23 added Effective 12/17/2022	<i>Cal. Gov. Code section 7522.34(a), (definition of pensionable compensation as the normal rate of pay or base pay for services rendered on a full-time basis); 7522.34(c)(3), (10), (11), and (12) (excludes any ad hoc payments and any bonus paid in addition to member's normal monthly rate of pay or base pay).</i>  <i>Not excluded from compensation earnable definition in Cal. Gov. Code section 31461(b)(1) (only excludes such payments when not paid to all similarly situated members in the same grade or class).</i>

THE FOLLOWING SPECIAL ALLOWANCE DESIGNATIONS DISPLAY THE SPECIAL ALLOWANCES CLASSIFIED BY THE CHIEF EXECUTIVE OFFICER PURSUANT TO KCERA BOARD'S ADMINISTRATION OF SPECIAL ALLOWANCES POLICY & CA SUPREME COURT ALAMEDA DECISION (7/30/2020)

**COMPENSATION EARNABLE**

THE FOLLOWING SPECIAL ALLOWANCES ARE CONSIDERED **COMPENSATION EARNABLE** FOR APPLICABLE MEMBERS (MEMBERSHIP BEFORE 1/1/2013).

<u>CODE</u>	<u>SPECIAL ALLOWANCE</u>	<u>FULL LEGEND</u>
LK		DEPUTY CORONER TRAINING OFFICER

**PENSIONABLE COMPENSATION**

THE FOLLOWING SPECIAL ALLOWANCES ARE **NOT** CONSIDERED **PENSIONABLE COMPENSATION** FOR APPLICABLE MEMBERS (MEMBERSHIP ON OR AFTER 1/1/2013).

<u>CODE</u>	<u>SPECIAL ALLOWANCE</u>	<u>FULL LEGEND</u>
LK		DEPUTY CORONER TRAINING OFFICER

**ALTERNATIVE INVESTMENTS RECORDS**

**EXEMPT FROM PUBLIC DISCLOSURE**

**(CA Gov. Code §7928.710)**

**(CA Gov. Code §7922.000)**

**(CA Gov. Code §54957.5)**

**DO NOT REPRODUCE**

**DO NOT DISTRIBUTE**

**ALTERNATIVE INVESTMENTS RECORDS**

**EXEMPT FROM PUBLIC DISCLOSURE**

**(CA Gov. Code §7928.710)**

**(CA Gov. Code §7922.000)**

**(CA Gov. Code §54957.5)**

**DO NOT REPRODUCE**

**DO NOT DISTRIBUTE**



# FIDUCIARY DUTIES & “ESG” INVESTMENT DECISIONS

Board of Retirement  
Kern County Employees  
Retirement Association

March 8, 2023

Maytak Chin  
Harvey Leiderman  
Reed **Smith** LLP



# TODAY'S CONVERSATION

1. Fundamental Fiduciary Duties
2. Duties triggered by investment considerations
3. Environmental, Social and Governance ("ESG") factors' intersection with fiduciary duties

# KCERA BOARD MEMBERS ARE FIDUCIARIES

Retirement boards owe a fiduciary duty to their members and their beneficiaries because they are responsible for ***the timely payment of promised benefits***, and stewardship of the assets they hold in trust to make those payments.

## Legal Source of Duty:

- California Constitution, Article XVI, section 17
- Common law, trust law, prudent investment statutes

# WHY DO WE HAVE FIDUCIARY DUTIES?

To corral human nature—we are more used to looking out for our own interests, and behave accordingly.

## **Examples of some behaviors fiduciaries should avoid:**

- Acting for our own gain or those we like
- Acting to disadvantage those we don't like
- Acting on our biases
- Going along with the group to avoid controversy
- Bowing to pressure from others that don't share our responsibility
- Acting emotionally, not rationally
- Making “back-room” deals to avoid controversy

# FIVE FUNDAMENTAL FIDUCIARY DUTIES

1. **Duty of Loyalty**. You owe your primary duty to members and beneficiaries of the trust. All other obligations must be subordinated.
2. **Exclusive Benefit Rule**. The assets of the trust may be used only to pay benefits and reasonable administrative expenses.
3. **Prudent Expert Rule**. You must exercise the care and skill of a knowledgeable, prudent person charged with similar duties under similar circumstances. And assure the competency of the assets of the trust.
4. **Diversify Investments**. You must diversify the portfolio to maximize return and minimize risk unless it is imprudent to do so (aka “Modern Portfolio Theory.”)
5. **Follow the law**. Must obey the plan documents, which includes laws, policies, regulations and governing documents of the Plan.

# THE DUTY OF LOYALTY IS NOT TO ALL "STAKEHOLDERS"

## **Members & Beneficiaries: BULLS-EYE!**

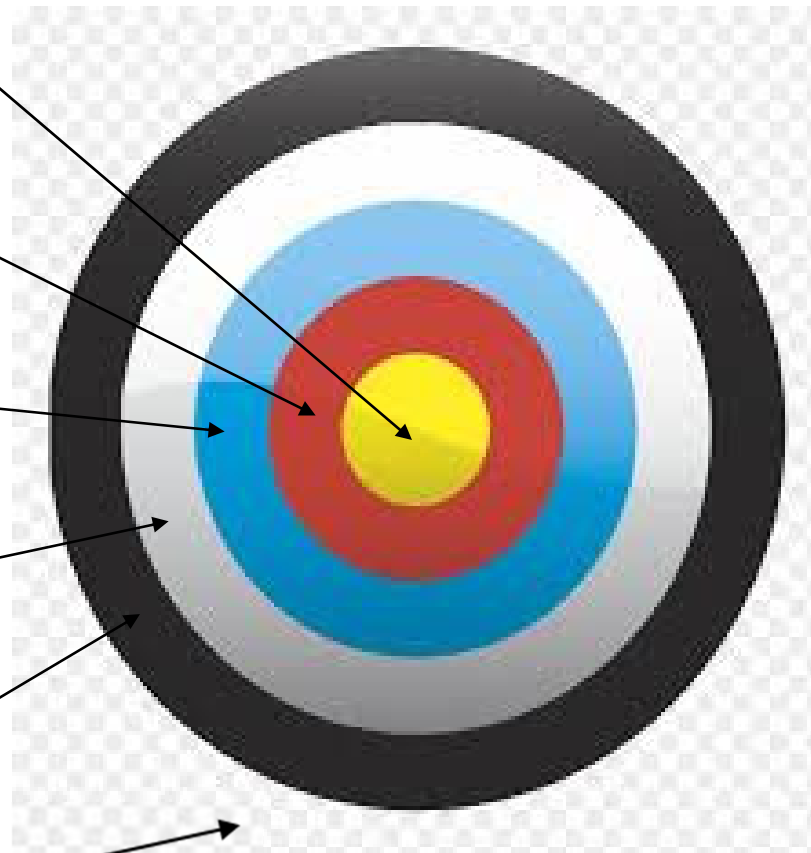
Contributing County and District Employers

Labor and Retiree Orgs.

Kern County Residents & Taxpayers

Contractors: Consultants, vendors...)

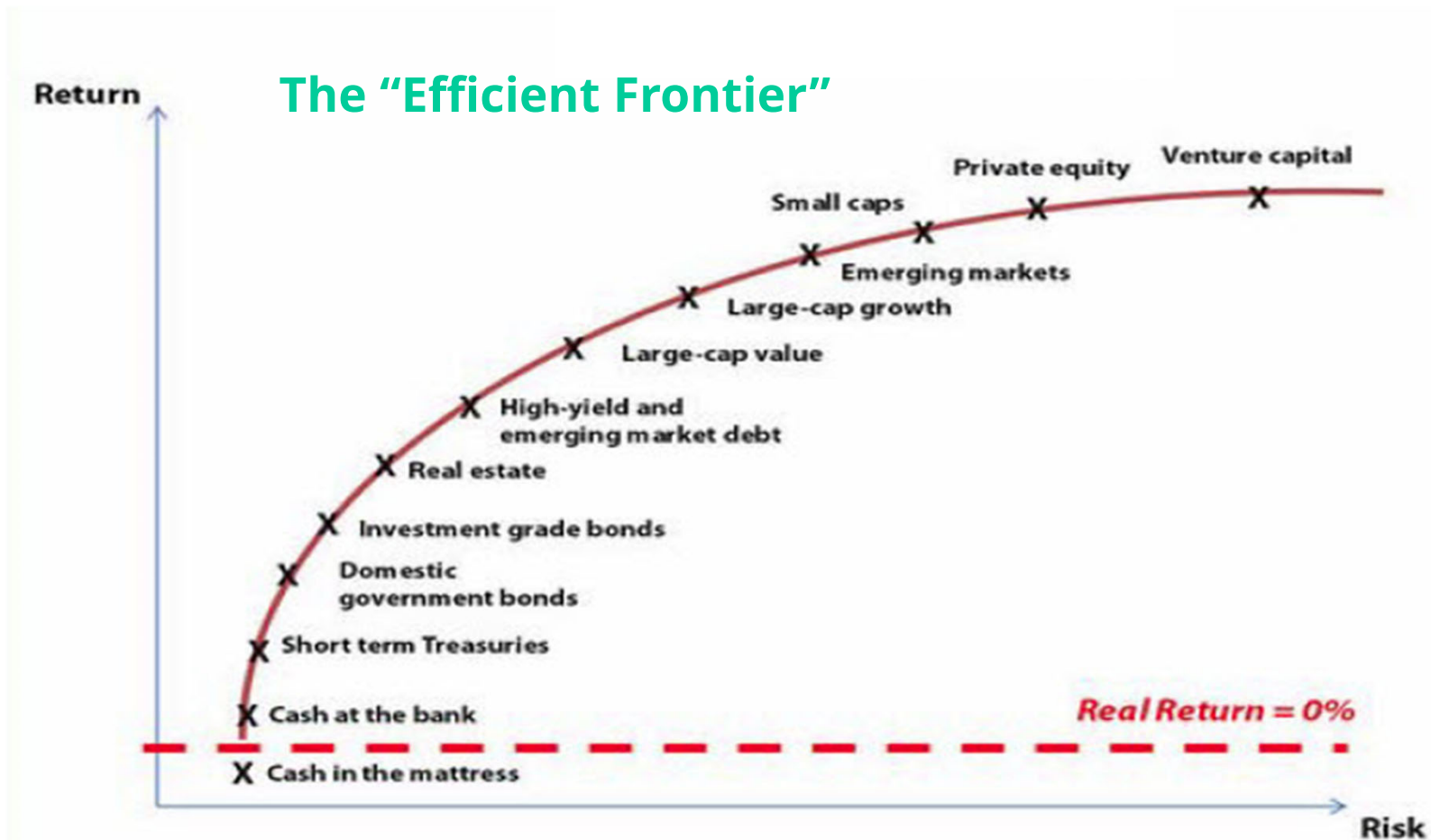
Others' Interests



# THE BOARD'S STEWARDSHIP OF THE ASSETS TRIGGERS MULTIPLE DUTIES

1. Assets exist only to pay members' benefits and reasonable administrative expenses – not to serve other purposes
2. The board must act prudently and knowledgeably, not impulsively or ignorantly
3. It is prudent to delegate investment responsibilities, but the board must monitor once delegated
4. The board must diversify the portfolio to achieve a return commensurate for the risk it takes

# RISKS FOR WHICH YOU CAN EXPECT TO BE COMPENSATED





THE GOAL OF ESG CONSIDERATIONS  
IS TO ELIMINATE  
UNCOMPENSATED RISKS  
FROM THE PORTFOLIO!

# RISKS FOR WHICH YOU CAN NOT EXPECT TO BE COMPENSATED – THESE WILL ONLY DETRACT FROM YOUR RETURNS

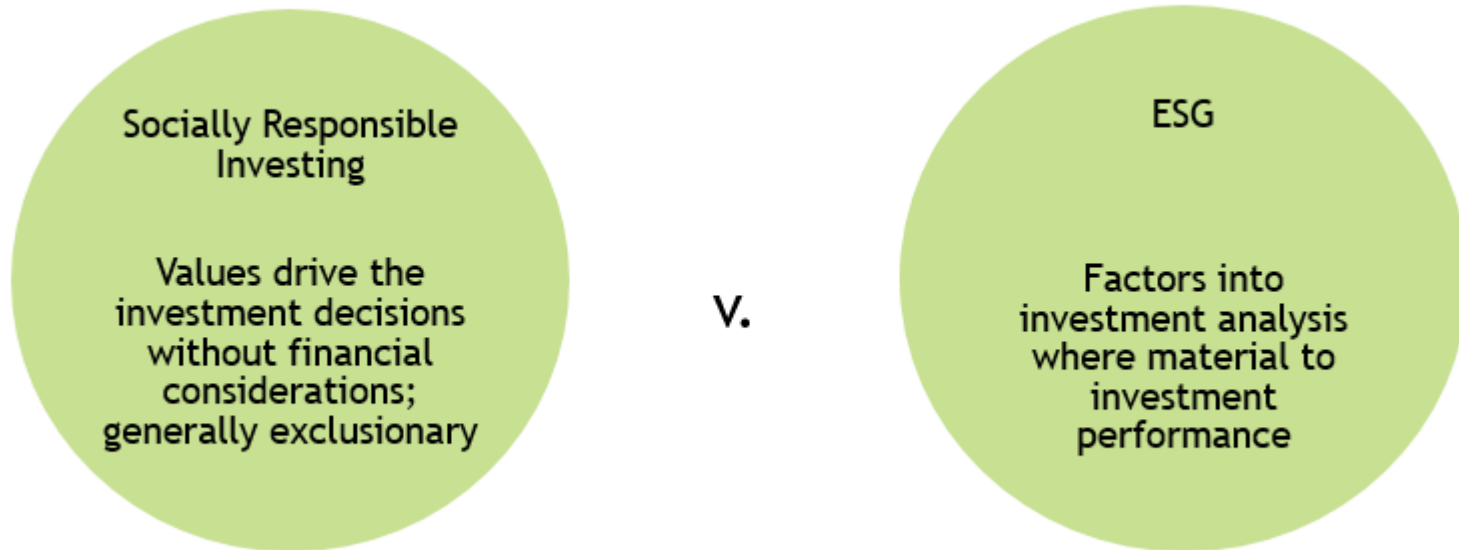
- Regulatory actions and liabilities
- Self-dealing/related party transactions; conflicts
- Unrealistic valuation of portfolio holdings
- Fraud, misappropriation
- Covenant violations

# TODAY'S FOCUS: ESG RISKS

**ESG stands for:** Environmental, Social and Governance factors

Environmental Factors	Social Factors	Governance Factors
Water Issues	Diversity, Equality, & Inclusion	Executive Compensation
Fuel Dependency	Fair Trade	Data Security Issues
Climate Change	Labor Consideration	Reporting and Disclosure
Renewable Energy Source	Consumer Protection	Board Composition

# ESG IS DIFFERENT FROM SOCIALLY RESPONSIBLE INVESTING



## TODAY'S FOCUS: ESG RISKS

- Climate instability threatens global economies, lives
- Morally repugnant actions threaten consumer preferences
- Lack of corporate diversity threatens long-term financial success
- Governments threaten regulatory actions and liabilities
- Assets valued today may be worthless tomorrow

**Important:** As fiduciaries, we care about these to ensure the success of our mission – to timely pay promised benefits now and in the future.

# ESG TRIGGERS DUTY OF LOYALTY

- Purpose of the retirement fund is to pay benefits when due
- Board is administrative, not a social policy-making body
- Actions must be taken solely in members' interests
- Trustees may not invest in a manner intended to serve non-members' interests
- Investment decision cannot be motivated by a purpose of advancing the trustee's personal views concerning social or political issues or causes

# ESG TRIGGERS EXCLUSIVE BENEFIT RULE

- Are we acting for the purpose of ensuring that benefit payments can be timely made when due, or for some other unrelated reason?
- Are we paying only reasonable expenses of administration?
- Are our managers extracting fees for ESG activities disproportionate to the value we are getting?

# ESG TRIGGERS DUTY OF PRUDENCE

## Prudent Delegation and the Duty to Monitor

- Board makes strategic decisions, but it would be imprudent not to delegate tactical decisions to staff, consultants and managers
- Delegated authority comes with delegated fiduciary duties – it does not relieve the Board of its responsibilities
- Board has a duty to periodically review delegates' performance and compliance with their charge ("the trustee must 'systematic[ally] consider all the investments of the trust at regular intervals' to ensure that they are appropriate." ) *Tibble v. Edison Int'l*, 575 U.S. 523, 529.
- Monitor how delegates are dealing with ESG factors, and at what cost



# WHY MONITORING MATTERS

- “ESG” is the buzz-word for investment managers, but what exactly are they doing with it?
- Involves an inherent values judgment that is hard to quantify
- No generally accepted standards for disclosure, measurement
- No long-term objective data (save for some backtesting)
- Need to make sure not just “lip service” or “greenwashing” but has an impact material to the Plan
- Need to know costs associated with ESG decisions
- If delegate investment authority, important to monitor activity

# MECHANISMS FOR EFFECTIVE MONITORING

- If a manager uses an ESG questionnaire in selecting investments, ask to see the questionnaire
- Don't ask what the manager is doing re ESG, but instead ask what ESG risks/gains are you considering that are not priced into the asset value
- Ask whether ESG is being used as a factor or filter in the investment process
- Benchmarking is important
  - Ex: ESG Data Convergence Program, and Novata

## EXAMPLE: ESG FILTERING



If a passive manager is hired to replicate the FTSE 100, and their performance is benchmarked against the index, what happens when they filter out 27 of the 100 companies due to ESG concerns?

On what bases have they excluded the 27 companies? How does it impact your expected risk/return? Are they still providing the diversification they were hired for? Is the benchmark fair any longer? Did they charge us for filtering out these companies?

## FIDUCIARY DUTY TEST FOR ESG

There must be a rational and material relationship between the ESG-related action at issue and the financial risk/return expectations of the Plan.

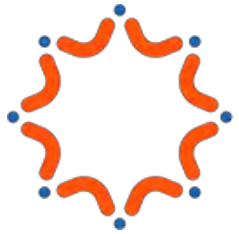
### **The key questions to ask:**

- Is the ESG impact on investment risk or return material?
- If we do not act to mitigate the risk or take the opportunity, are we likely to be adversely impacted?
- Are the costs associated with taking this action reasonable?

## THE TAKE AWAY

From a fiduciary standpoint, trustees must understand that ESG-related actions should be investment decisions, not policy decisions.

# QUESTIONS



# GLASS LEWIS

The World's Choice For Corporate Governance

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Proxy Voting March 8, 2023

**Our Mission:** To partner with our customers in driving value creation through solutions that promote good governance and stewardship.

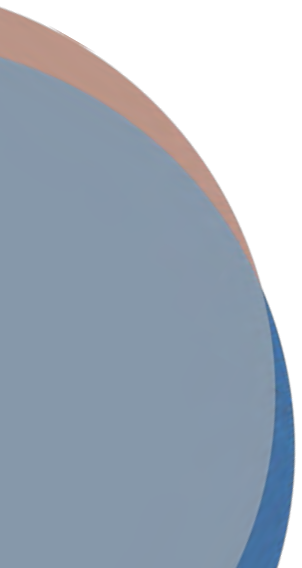


# Glass Lewis Updates

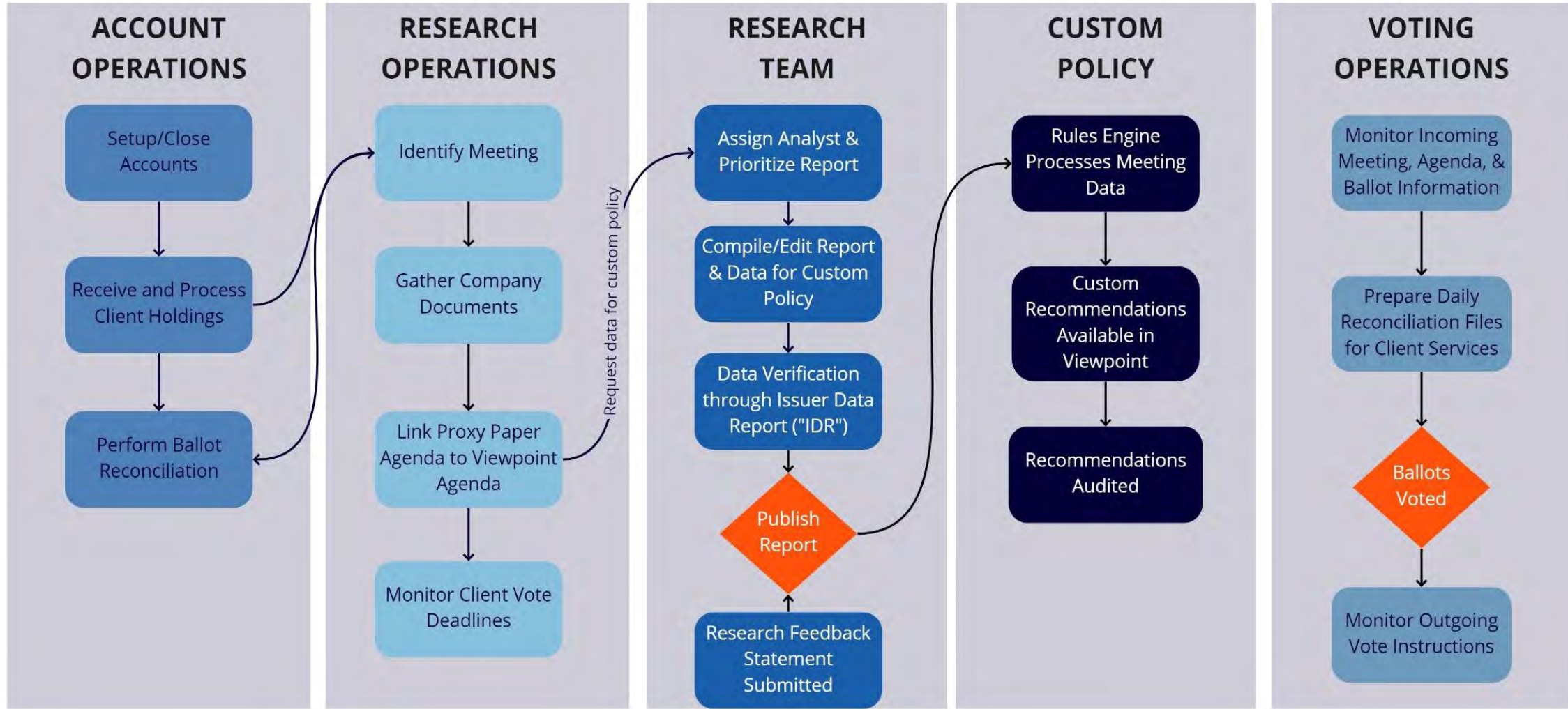
- Continued investment in product & technology with hiring of new CTO and SVP of Product
  - New ESG Data Feed provides access to underlying data from ESG Profile
  - Dennis Johnson, CFA, former Chief Investment Officer at TIAA and Comerica Bank, joined Glass Lewis board
  - Additional staffing across product, technology and service organizations, including a 20% increase in the research organization
  - Introduction of Engagement Management Platform to further enhance stewardship proposition
  - Thematic policies available via Voting Choice
  - Updates to thematic voting policies in November 2022
  - Expansion of the coverage universe for the ESG Profile coming in January 2023
- 1,300+ clients with US\$40 trillion in AUM
  - 450+ employees across offices in the U.S., Europe and APAC
  - 30,000+ shareholder meetings in 100+ markets
  - 1,300+ engagements globally
  - 2,000+ Issuer Data Reports
  - 150+ Report Feedback Statements
  - 75+ Controversy Alerts
  - Average lead times of 18+ days
  - Research accuracy rates of 99.8%

# Proxy Voting Infrastructure

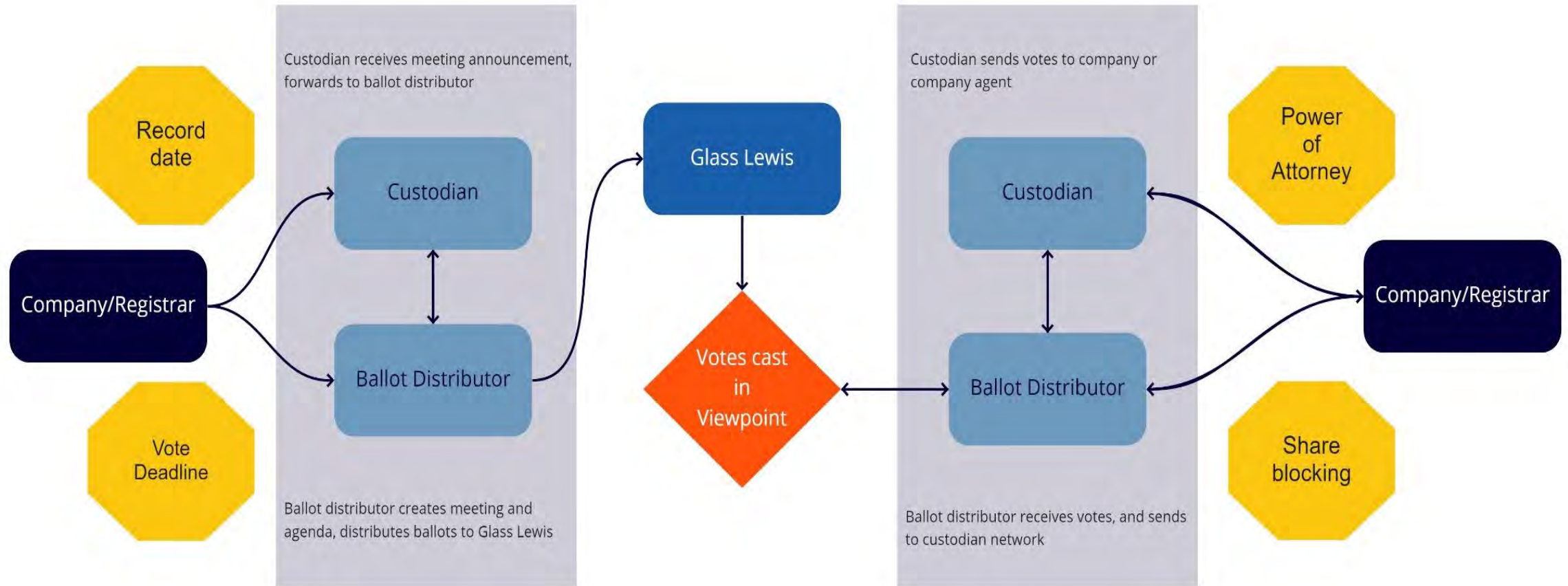
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# Glass Lewis Process Overview



# Basic Data Flow



# Glass Lewis Research

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# Proxy Paper

## 2022 Proxy Research

- **Published ~3 weeks in advance** to maximize time for investors to make vote decisions
- **Over 2,300+ IDRs** provides transparency to data points used in analysis prior to issuing the report
- **~150 RFSs** allows public companies to provide opinions of our analysis, which we share directly with investors
- Access a robust library of thought leadership including white papers, proxy season previews, reviews and webinars
- Reports are bolstered by information from industry leaders such as Sustainalytics, Diligent, SASB, BitSight, and ESG Book

**COMPANY PROFILE**

	1 YR TSR	3 YR TSR AVG.	5 YR TSR AVG.
JPM	-5.5%	9.1%	17.2%
S&P 500	18.4%	14.2%	15.2%
PEERS*	-13.2%	0.0%	8.6%

MARKET CAPITALIZATION (MM USD) 387,335  
 ENTERPRISE VALUE (MM USD) 556,400  
 REVENUES (MM USD) 102,063

ANNUALIZED SHAREHOLDER RETURNS: \*PEERS ARE BASED ON THE INDUSTRY SEGMENTATION OF THE GLOBAL INDUSTRIAL CLASSIFICATION SYSTEM (GICS). FIGURES AS OF 31-DEC-2020. SOURCE: CAPITAL IQ

**EXECUTIVE COMPENSATION**

	1 YR	3 YR	5 YR
CHANGE IN CEO PAY	0%	12%	74%
SAY ON PAY FREQUENCY	1 Year	COMPEXATION GRADE 2020	F
GLASS LEWIS STRUCTURE RATING	Fair	GLASS LEWIS DISCLOSURE RATING	Good
SINGLE TRIGGER CIC VESTING	No	EXCISE TAX GROSS-UPS	No
CLAWBACK PROVISION	Yes	OVERHANG OF INCENTIVE PLANS	3.85%

**CORPORATE GOVERNANCE**

ELECTION METHOD: Majority w/ Resignation Policy    CEO START DATE: December 2005

CONTROL METHOD: DUAL-CLASS

STAGGERED: COMBINED

INDIVIDUAL SKILLS MATRIX: POISON PILLS APPROVED

AUDITORS: MATERIAL RESTATEMENTS

PRIMARY FINANCIAL STATEMENTS: SASB MATERIALITY

**PROXY PAPER**

**JPMORGAN CHASE & CO.**

NYSE: JPM  
ISIN: US46625H1005

MEETING DATE: 18 MAY 2021  
RECORD DATE: 19 MARCH 2021  
PUBLISH DATE: 28 APRIL 2021

INDEX MEMBERSHIP: RUSSELL 1000; DOW JONES COMPOSITE AVERAGE; S&P GLOBAL 100; DOW JONES INDUSTRIAL AVERAGE; RUSSELL 3000; S&P 100; S&P 500

SECTOR: FINANCIALS  
INDUSTRY: BANKS  
COUNTRY OF TRADE: UNITED STATES  
COUNTRY OF INCORPORATION: UNITED STATES  
HEADQUARTERS: NEW YORK, NY  
VOTING IMPEDIMENT: NONE

OWNERSHIP    COMPANY PROFILE    ESG PROFILE    COMPENSATION    COMPENSATION ANALYSIS    COMPANY UPDATES

PEER COMPARISON    VOTE RESULTS    APPENDIX

**2021 ANNUAL MEETING**

PROPOSAL	ISSUE	BOARD	GLASS LEWIS	CONCERNS
1.00	Election of Directors	FOR	FOR	
1.01	Elect Linda B. Barmann	FOR	FOR	
1.02	Elect Stephen B. Burke	FOR	FOR	
1.03	Elect Todd A. Combs	FOR	FOR	
1.04	Elect James S. Crown	FOR	FOR	
1.05	Elect James Dison	FOR	FOR	
1.06	Elect Timothy P. Flynn	FOR	FOR	
1.07	Elect Melody Hobson	FOR	FOR	
1.08	Elect Michael A. Neal	FOR	FOR	
1.09	Elect Phoebe N. Novakovic	FOR	FOR	
1.10	Elect Virginia M. Rometty	FOR	FOR	
2.00	Advisory Vote on Executive Compensation	FOR	FOR	
3.00	Amendment to the Long-Term Incentive Plan	FOR	FOR	
4.00	Ratification of Auditor	FOR	FOR	
5.00	Shareholder Proposal Regarding Reducing Ownership Threshold Required to Act by Written Consent	AGAINST	FOR	• The Company's 20% ownership threshold is too high to provide shareholders with a meaningful right to action by written consent.
6.00	Shareholder Proposal Regarding Racial Equity Audit	AGAINST	FOR	• The requested audit would help to identify and mitigate potentially significant risks.
7.00	Shareholder Proposal Regarding Independent Chair	AGAINST	FOR	• An independent chair is better able to oversee the executives of a company and set a pro-shareholder agenda.

JPM May 18, 2021 Annual Meeting 1 Glass, Lewis & Co., LLC

# Proxy Research Process

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- Team Approach
  - Analysis varies based upon market, issue, complexity and company size
  - All reports reviewed by two or more people; varies by report profile
  - Accuracy and lead times are monitored to ensure client satisfaction
- Executive Compensation
  - Analyze executive conditional content from, Sustainalytics, Diligent, and SASB
  - Compensation quantitatively and qualitatively
  - Incorporate multiple performance factors into P4P analysis
- Mergers & Acquisitions / Proxy Contests
  - Specialized team and experience
  - Proposed offers are evaluated versus the returns to shareholders
  - Approach to proxy contests aligns well with most institutional investors
- ESG / Shareholder Proposals
  - Viewpoint's proprietary rules engine interprets complex policies
  - Unmatched nuance and cascading rules minimize noise and focus your attention on the most important issues



GLASS LEWIS

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Institutional Investors | [GROW@glasslewis.com](mailto:GROW@glasslewis.com)

Corporate Website | [Glasslewis.com](https://www.glasslewis.com)

Email | [Info@glasslewis.com](mailto:Info@glasslewis.com)

Social |  [@glasslewis](https://twitter.com/glasslewis)

 [Glass, Lewis & Co.](https://www.linkedin.com/company/glass-lewis-co)





**Date:** March 8, 2023  
**To:** Trustees, Board of Retirement  
**From:** Dominic D. Brown, Chief Executive Officer *Dominic D. Brown*  
**Subject:** **2023-24 Chief Executive Officer Performance Evaluation Criteria**

In accordance with the Chief Executive Officer Performance Evaluation Policy, the Chief Executive Officer must be reviewed by the Administrative Committee each year for the twelve-month period for which the criteria are effective. The following criteria and ratings were approved for 2022-2023, and will be used for 2023-2024:

**CHIEF EXECUTIVE OFFICER  
PERFORMANCE EVALUATION CRITERIA**

1. General Management Abilities as determined by the CEO Evaluation Survey	30%
2. Financial Accounting and Reporting	15%
3. Budgetary Control	15%
4. Strategic Plan Implementation	40%
	<hr/> <hr/> <b>100%</b>

The Chief Executive Officer is required to complete a self-evaluation annually and to share that with the Board, along with the results of a Stakeholder Survey, Employee Survey, and Trustee Survey.

The Administrative Committee heard the matter at its February 28, 2023 meeting and voted unanimously to recommend approval to the Board of Retirement. Therefore, it is recommended that your Board approve the 2023-2024 Chief Executive Officer Performance Evaluation Criteria.

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# CHIEF EXECUTIVE OFFICER'S REPORT

KCERA | DOMINIC D. BROWN | MARCH 2023



# OFFICE UPDATE

- Board Referrals
  - AB2449 Brown Act Amendments, Proxy Voting, ESG Investing, KCERA Property Inc., Election Policy date changes
- Staffing
  - New Staff: Senior Accountant and Senior Paralegal
  - Recruitments: Investment Analyst, Communications Manager
  - Upcoming Recruitments: Senior Member Services Analyst, Member Services Specialist
- Solar Update – Solar company has revised and resubmitted application to the Association
- RFP Update: Financial Statement Audit, Risk Analytics, Japan Equity
- Governance Consultant Aon to bring analysis of Strategic Planning interviews with Trustees to future BOR meeting
- Service Purchase Update
- MMRO Update – Disability
- Board Room Audio Upgrades

# OPERATIONS ACTIVITY

- Member Services
  - 22 new retirements and calculations
  - 27 death benefit calculations
  - 18 service-credit purchase calculations
  - 80 retirement estimates
  - 151 new active members
  - 72 terminations with disposition packets
  - 30 in-person appointments
  - 175 walk-ins
  - 896 phone calls
  - 280 emails
- Accounting & Reporting
  - Service Purchases
  - GASB 68
  - Training Plan for new Staff
  - Commercial P-cards
- Information Technology
  - SRBR update
  - Banking Validation
  - 2-Factor Authentication for Portal

# UPCOMING EVENTS

- Finance Committee – 3/22 Meeting to discuss Finance Committee Charter updates, Audit RFP, GASB 68 contract, and actuarial valuation considerations
- Administrative Committee – 3/22 Meeting to discuss Personnel Plan, Election Procedures, Governance Report, and Trustee Education Policy
- Investment Committee – No meetings currently scheduled
- KCERA Property, Inc. – No meetings currently scheduled
- Board of Retirement – Next regular monthly meeting will be April 12, 2023 and topics to include: Strategic Planning and Governance Report with Aon, Special District Landscape with Reed Smith, and Actuarial Experience Education with Segal.
- Special Board Meeting: June target for *Alameda* Decision Appeals



# CIO REPORT

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INVESTMENT PROGRAM UPDATE | March 2023

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# Rebalancing

## FEBRUARY ACTIVITY

- Fixed Income
  - +25MM Parametric Rates
- Commodities
  - Transitioned Wellington fund to SMA
- Hedge Fund
  - +10MM Indus
- Cash
  - +25MM BlackRock Short Duration



Fixed Income: Increase rates exposure, overweight versus policy while underweight versus adjusted policy



Commodities: Transitioned our investment with Wellington from a fund to an SMA. Currently fully funded.



Hedge Fund: Took advantage of opportunity set in Asia



Cash: Increased exposure to take advantage of higher cash return

# Positioning

## ACTUAL VS POLICY TARGET

Asset Class	Actual	Policy Target	Adj. Policy Target	Diff. Act. vs. Pol.
Public Equities	31.9%	37.0%	38.8%	-6.9%
Fixed Income	24.3%	24.0%	27.4%	-3.1%
Core	15.3%	14.0%	17.4%	-2.1%
Credit	5.0%	6.0%	6.0%	-1.0%
Emerging Market Debt	4.0%	4.0%	4.0%	0.0%
Commodities	3.8%	4.0%	4.0%	-0.2%
Hedge Funds	10.4%	10.0%	10.0%	0.4%
Alpha Pool	4.2%	5.0%	5.0%	-0.8%
Midstream Energy	5.8%	5.0%	5.0%	0.8%
Core Real Estate	6.6%	5.0%	5.0%	1.6%
Private Real Estate	2.1%	5.0%	2.1%	0.0%
Private Equity	3.2%	5.0%	3.2%	0.0%
Private Credit	4.5%	5.0%	4.5%	0.0%
Opportunistic	3.3%	0.0%	0.0%	3.3%
Cash	-0.1%	-5.0%	-5.0%	4.9%

Key underweight position is **Public Equity**

**Public Equity**: underweight vs. policy target and adjusted policy target. Underweight is primarily in domestic large cap.

**Core Fixed Income**: overweight vs. policy target and underweight adjusted policy target.

**Core Real Estate**: staff is working to reduce overweight; however, the funds have redemption queues and are limiting redemptions.

**Private Equity and Private Real Estate**: underweights continue to be reallocated to other asset classes where we see better return opportunity than **Public Equity**, including **Cash**, **Midstream**, and **Opportunistic**.

**Private Markets**: exposure approaching 10%; the allocation should reach 15% target around 2026.

\*Adjusted Policy Target: see example in the Appendix



# Updates

- Launched an RFP for Japan Equities
  - Evaluating Risk Analytic System RFP responses
-

# Key Initiatives



## **Enhancing return while managing risk**

- Asset Liability Study
- Fixed Income portfolio review
- Investment Policy Statement review
- Multi-asset research / tactical asset allocation
- Opportunistic investments
- Private Markets

**Next meeting TBD**

# Investment Committee Meetings

*The last IC meeting was held on February 27th*



# Appendix

# Policy and Adjusted Policy Target Methodology

Asset Class	Actual	Policy Target	Diff. Act. Vs. Pol.	Adj. Target
Public Equities	30.5%	37.0%		38.9%
Fixed Income	23.3%	24.0%		26.3%
Core	13.8%	14.0%		16.8%
Credit	5.7%	6.0%		5.7%
Emerging Market Debt	3.8%	4.0%		3.8%
Commodities	4.7%	4.0%		4.7%
Hedge Funds	10.4%	10.0%		10.4%
Alpha Pool	5.2%	5.0%		5.2%
Midstream Energy	6.7%	5.0%		6.7%
Core Real Estate	7.2%	5.0%		7.2%
Private Real Estate	2.1%	5.0%	-2.9%	5.0%
Private Equity	3.1%	5.0%	-1.9%	5.0%
Private Credit	5.1%	5.0%	0.1%	5.0%
Opportunistic	3.2%	0.0%		3.2%
Cash	-1.5%	-5.0%		-1.5%

## Public Equity Adjusted Target

The 1.9% underweight from Private Equity is reallocated to Public Equity

Policy Target of 37% + 1.9% = 38.9%, which is the Adjusted Policy Target

## Core Fixed Income Adjusted Target

The 2.8% combined underweight from Private Credit and Real Estate are reallocated to Core Fixed Income

Policy Target of 14% + 2.8% = 16.8%, the Adjusted Policy Target



Jennifer Esquivel Zahry, Chief Legal Officer

Phillip Jenkins, Deputy Chief Legal Officer

Maggie Peralta-Lee, Senior Paralegal

Irma Chavez, Senior Legal Secretary

# CLO Report March 2023

# Discussion Items



**WRIT DECISION**



**APPELLATE OPINION**



**MARCH CALENDAR**

# LACERA v. County of Los Angeles

- Parties
- Cause for Writ of Mandate and Declaratory Relief
  - 2017 and 2021 Personnel Decisions
  - Ministerial Duty under Cal. Constitution and Gov. Code
- Standard of Review
  - Traditional Writ of Mandate - Cal. Code of Civ. Proc. § 1085 – Mandatory Duty
- Review of Governing Law
  - Cal. Const.
  - CERL and Legislative history
  - Civil Service System
  - Classification and Compensation of LACERA Personnel
  - *Westly v. CalPERS*



# LACERA v. County of Los Angeles

- Statement of Facts
  - County's Evidence
  - LACERA's Evidence
- Analysis
  - Statutory Interpretation
    - County's Authority
    - LACERA's Authority
    - Section 17 and *Westly (2003)*
    - County's change of position and delegation argument
    - CERL section 31622.1
  - Harmonize legal authorities
- Conclusion
  - Petition Denied

# Morgan v. Board of Retirement of KCERA

- Application was filed on March 1, 2015.
- Applicant worked for KCSO as an emergency dispatcher.
- SDAG recommended denial of application.
- Administrative hearing held on January 16, 2019.
- Board adopted the administrative decision on August 14, 2019.
- Applicant filed a Writ of Mandamus on November 6, 2019.
- Trial Court order issued on July 8, 2021.
- Appellate Court opinion issued on February 24, 2023.

# Morgan v. Board of Retirement of KCERA

- Appellate Opinion
  - Appellant sought review under improper standard. Argued your Board's decision denying her application was not supported by substantial evidence.
  - KCERA's counsel correctly argued trial order should be reviewed under the "As a matter of law standard." Appellate Court agreed.
  - Court reasoned your Board's decision was supported by substantial evidence because it was based, in part, on the opinion of your medical advisor a report which the Opinion identifies as substantial evidence.
  - Opinion affirms SDAG determination.

# March Calendar

	Pending CLO/DCLO Review
Board Material Prep/Review	8
Investment/ Custodial Documents	9
Disability Matters	14
Community Property Matters	7
Staff Inquiries	24
Administrative Appeals	2
Board/Committee Meetings/Staff Meetings/ Conferences	12
POA's/ Conservatorships/ Guardianships/ Trusts/ Estates	5
Post-Retirement Employment Certifications	1
Trainings	1
Special Projects	1
Public Records Request	3
Litigation Matters	1