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9 RHONDA BIESEMEIER, and DENNIS J. NASRAWI

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF STANISLAUS**

12 MICHAEL R. O'NEAL, RHONDA BIESEMEIER,)
13 and DENNIS J. NASRAWI,)

14 Plaintiffs,)

15 v.)

16 STANISLAUS COUNTY EMPLOYEES')
17 RETIREMENT ASSOCIATION, and DOES 1-30,)

18 Defendants.)

CASE NO: 648469

NOTICE OF MOTION AND
MOTION FOR SUMMARY
JUDGMENT AND/OR SUMMARY
ADJUDICATION

Date: September 22, 2014

Time: 10:00 a.m.

Dept. 2

Judge: Hon. Leslie C. Nichols

Complaint Filed: November 30, 2009

Trial Date: October 27, 2014

19 **TO ALL PARTIES AND TO THEIR RESPECTIVE COUNSEL OF RECORD:**

20 **PLEASE TAKE NOTICE** that on September 22, 2014, at 10:00 a.m., or as soon
21 thereafter as the matter may be heard in Department 2 of the above-entitled court, located at 800
22 11th Street, Modesto, California 95354, plaintiffs Michael R. O'Neal, Rhonda Biesemeier and
23 Dennis J. Nasrawi ("plaintiffs") will and hereby do move for summary judgment and/or
24 summary adjudication of the causes of action alleged in their consolidated actions.

25 This motion is made pursuant to California Code of Civil Procedure section 437c,
26 subdivisions (a), (c), (f)(1), and (o)(2), on the grounds that there are no triable issues of fact and
27 the plaintiffs are entitled to judgment, or summary adjudication of individual causes of action, as
28 a matter of law, because:

1 (A) StanCERA's uses of trust assets to offset the actuarially-required, employer
2 contributions of the County of Stanislaus ("County") was imprudent, a violation of section 17 of
3 article XVI of the California Constitution, and a breach of fiduciary duty;

4 (B) StanCERA's transfer of \$50 million in non-valuation reserves to valuation
5 reserves for the sole purpose of minimizing the actuarially-required, employer contributions of
6 the County was imprudent, a violation of section 17 of article XVI of the California Constitution,
7 and a breach of fiduciary duty; and

8 (C) StanCERA's adoption of a schedule of negative amortization of the County's
9 unfunded liability was a violation of Government Code section 31453.5, imprudent, a violation
10 of section 17 of article XVI of the California Constitution, and a breach of fiduciary duty.

11 In accordance with rule 3.1350 of the California Rules of Court, Award requests the
12 following adjudications:

13 ADJUDICATION NUMBER 1

14 The Stanislaus County Employees' Retirement Association ("StanCERA") violated the
15 County Employees Retirement Law of 1937 and the California Constitution by using \$10 million
16 of trust fund assets to offset the County of Stanislaus' ("County") employer contribution for the
17 fiscal year July 1, 2009, to June 30, 2010.

18 ADJUDICATION NUMBER 2

19 StanCERA's use of \$10 million of trust fund assets to offset the County's employer
20 contribution for the fiscal year July 1, 2009, to June 30, 2010, violated the California
21 Constitution because no reasonably prudent trustee would have approved such a transfer.

22 ADJUDICATION NUMBER 3

23 StanCERA violated the County Employees Retirement Law of 1937 and the California
24 Constitution by using \$21.4 million of trust fund assets to offset the County's employer
25 contribution for the fiscal year July 1, 2010, to June 30, 2011.

26 ADJUDICATION NUMBER 4

27 StanCERA's use of \$21.4 million of trust fund assets to offset the County's employer
28 contribution for the fiscal year July 1, 2010, to June 30, 2011, violated the California

1 Constitution because no reasonably prudent trustee would have approved such a transfer.

2 ADJUDICATION NUMBER 5

3 StanCERA violated the County Employees Retirement Law of 1937 and the California
4 Constitution by using \$14.3 million of trust fund assets to offset the County's employer
5 contribution for the fiscal year July 1, 2011, to June 30, 2012.

6 ADJUDICATION NUMBER 6

7 StanCERA's use of \$14.3 million of trust fund assets to offset the County's employer
8 contribution for the fiscal year July 1, 2011, to June 30, 2012, violated the California
9 Constitution because no reasonably prudent trustee would have approved such a transfer.

10 ADJUDICATION NUMBER 7

11 StanCERA's use of \$50 million of trust fund assets to reduce the County's employer
12 contribution for the fiscal year July 1, 2009, to June 30, 2010, violated the California
13 Constitution because no reasonably prudent trustee would have approved such a transfer.

14 ADJUDICATION NUMBER 8

15 StanCERA violated Government Code 31453.5 by adopting a negative amortization
16 schedule.

17 ADJUDICATION NUMBER 9

18 StanCERA's adoption of a negative amortization schedule violated the California
19 Constitution because no reasonably prudent trustee would do so.

20 The plaintiffs request the court to enter a summary judgment awarding plaintiffs the
21 following relief:

- 22 (1) an injunction prohibiting StanCERA from using trust fund assets to
23 offset the actuarially-determined, employer contributions of the
24 County of Stanislaus;
- 25 (2) an injunction prohibiting StanCERA from minimizing the
26 employer contributions of the County of Stanislaus by transferring
27 non-valuation reserves to valuation reserves;
- 28 (3) an injunction prohibiting StanCERA from adopting a schedule of

1 negative amortization of the unfunded liabilities of the County of
2 Stanislaus and mandating that StanCERA adopt a new schedule of
3 positive amortization of such unfunded liabilities;

4 (4) an injunction mandating that StanCERA add to its actuarially-determined,
5 employer contribution for the County of StanCERA, for the period July 1,
6 2014, through June 30, 2015, the sum of \$45.7 million to compensate the
7 plaintiffs' trust fund for the benefits which StanCERA unlawfully
8 conferred upon the County of StanCERA, i.e., the offsets of \$10 million
9 for the fiscal year ending on June 30, 2010, \$21.4 million for the fiscal
10 year ending on June 30, 2011, and \$14.3 million for the fiscal year ending
11 on June 30, 2012; and

12 (5) an injunction mandating that StanCERA transfer and restore \$95.7
13 million from valuation reserves of the County of Stanislaus to non-
14 valuation reserves.

15 This motion is based upon:

16 (1) this Notice of Motion and Motion for Summary Judgment and/or
17 Summary Adjudication;

18 (2) the Memorandum of Points and Authorities in Support of
19 Plaintiffs' Motion for Summary Judgment and/or Summary
20 Adjudication;

21 (3) the Separate Statement of Undisputed Facts in Support of
22 Plaintiffs' Motion for Summary Judgment and/or Summary
23 Adjudication;

24 (4) the Declaration of Michael A. Conger in Support of Plaintiffs'
25 Motion for Summary Judgment and/or Summary Adjudication;

26 (5) the Declaration of William Sheffler in Support of Plaintiffs'
27 Motion for Summary Judgment and/or Summary Adjudication;

28 (6) the Request for Judicial Notice in Support of Plaintiff's Motion for

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Summary Judgment and/or Summary Adjudication; and
(7) the Notice of Lodgment in Support of plaintiffs' Motion for Summary
Judgment and/or Summary Adjudication,
all served and filed herewith, the pleadings and records on file herein, and on such oral and
documentary evidence as may be presented to the court upon hearing of this motion.

Dated: July 2, 2014

LAW OFFICE OF MICHAEL A. CONGER

By: 

Michael A. Conger
Attorney for Plaintiffs