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File No. 30326.00001

March 12, 2019

**VIA TRUEFILING**

Presiding Justice Stuart A. Pollack  
Justice Alison M. Tucher  
Justice Tracie L. Brown  
California Court of Appeal  
First Appellate District, Division 4  
350 McAllister Street  
San Francisco, California 94102

Re: Request for Publication – *Retired Oakland Police Officers Association et al. v. Oakland Police and Fire Retirement System et al.*, No. A148987;  
Unpublished Opinion Filed February 25, 2019  
(California Rules of Court, rules 8.1105 and 8.1120.)

Honorable Justices:

The Oakland Police and Fire Retirement System and the City of Oakland (“Appellants”) respectfully request this Court order publication of the unpublished opinion filed in this matter (the “Opinion”). The League of California Cities also supports and hereby joins in this request.<sup>1</sup>

Publication of the Opinion will provide important guidance to public agencies and retirees who participate in so-called “fluctuating retirement systems” similar to the Oakland Police and Fire Retirement System.<sup>2</sup> As noted during oral argument, both the Oakland system and numerous similar retirement systems have been the subject of repeated litigation regarding what compensation paid to active duty personnel should be

<sup>1</sup> The League of California Cities® is an association of 475 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.

<sup>2</sup> Although the Oakland system is “closed” and no active duty city employees remain as members, over seven hundred retirees or their spouses continue to receive monthly benefits.



**BEST BEST & KRIEGER**  
ATTORNEYS AT LAW

Presiding Justice Arthur Gilbert  
Justice Steven Z. Perren  
Justice Kenneth R. Yegan  
March 12, 2019  
Page 2

attributable to retiree benefits. There are at least four prior court decisions that relate directly to the Oakland Police and Fire Retirement System including the unpublished decision in *Arca, et al. v. City of Oakland, et al.* (*Arca I*) and *City of Oakland v. Oakland Police & Fire Retirement System* (2014) 224 Cal.App.4th 210, both of which were cited in this appeal. The instant decision marks a substantial step forward in terms of clarifying important issues and, as such, publication of the Opinion will contribute to the law interpreting such fluctuating pension systems and perhaps reduce the number of future disputes.

This request is timely filed within 20 days of the Clerk's filing the unpublished opinion on January 25, 2019. (Cal. Rules of Court, rule 8.1120(a)(3). The Opinion meets several of the standards for publication. It "applies an existing rule of law to a set of facts significantly different from those stated in published opinions;" it "advances a new interpretation, clarification, criticism, or construction of a provision of a constitution, statute, ordinance, or court rule;" and it "involves a legal issue of continuing public interest." (Cal. Rules of Court, rules 8.1105(c)(2), 8.1105(c)(4), 8.1105(c)(6).)

First and foremost, the Opinion provides clear guidance as to the interrelationship of "rank" and "assignment" as it relates to the general requirement within fluctuating pension systems that compensation of active duty personnel, to be considered for inclusion in the calculation of retiree benefits, must be "attached to rank." This issue has been litigated in one form or another regarding the Oakland system, as well numerous other retirement systems operated by other public entities. By unambiguously distinguishing between "rank" and "assignment," the Opinion provides clear guidance regarding a contentious issue about which in the past there has been little agreement.

Further, the Opinion adds to the law interpreting fluctuating pension systems through its evaluation of the "Master Police Officer Pay" at issue in this matter and various "special assignments" that are often the source of additional pay for police and other public safety employees. By explaining why special assignment pay, such as Master Police Officer Pay, is not pay that "attaches to rank," this Court again provides new and significant guidance relating to what compensation will or will not "attach to rank" for purposes of computing retiree benefits.



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ATTORNEYS AT LAW

Presiding Justice Arthur Gilbert  
Justice Steven Z. Perren  
Justice Kenneth R. Yegan  
March 12, 2019  
Page 3

Finally, the Opinion clearly distinguishes such “special assignment” pay from the “line-up pay” at issue in this Court’s prior holding in *City of Oakland v. Oakland Police & Fire Retirement System* (2014) 224 Cal.App.4th 210. Because of specific ambiguities related to “line-up pay,” such compensation has been the source of continuing controversy. The Opinion’s direct discussion of “line-up pay” will be invaluable in putting to rest many of those continuing issues.

For the forgoing reasons, Appellants and the League of California Cities respectfully request this Court order publication of the Opinion in its entirety.

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