Case No. S239958

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

Cal Fire Local 2881 (formerly known as CDF Firefighters), et al.,
Petitioners and Appellants,

v.

California Public Employees' Retirement System (CalPERS),
Defendant and Respondent,

And,

The State of California,
Intervener and Respondent.

APPLICATION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF AND [PROPOSED] BRIEF OF *AMICI CURIAE* IN SUPPORT OF PETITIONERS CAL FIRE LOCAL 2881, et al.

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS
California Rules of Court 8.208

Amici Curiae, by and through counsel, certify that, other than the parties to this proceeding, they are unaware of any person or entity that has a financial or other interest in the outcome of this proceeding that the justices should consider in determining whether to disqualify themselves under canon 3E of the Code of Judicial Ethics.

Dated: February 21, 2018

MASTAGNI HOLSTEDT, APC

DAVID E. MASTAGNI
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APPLICATION TO FILE AMICI CURIAE BRIEF

TO THE HONORABLE CHIEF JUSTICE TANI G. CANTIL-SAKAUYE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Pursuant to Cal. Rules of Court, Rule 8.520(f), the Amici Curiae respectfully ask for leave to file the attached amicus brief in support of Petitioners.

I

THE AMICI CURIAE

The Deputy Sheriffs' Association of Alameda County ("ACDSA") represents approximately 928 deputy sheriffs and sergeants with respect to wages, hours, working conditions, and post-employment benefits. On February 16, 2018, ACDSA petitioned this Court for review of a First Appellate District decision in a similar case challenging modifications to ACDSA members' pension formula. (*Alameda County Deputy Sheriffs' Assn., et al. v. Alameda County Employees' Retirement Assn., et al.*; Case No. S247095.) The Court's decision in this case will likely impact the outcome of ACDSA's appeal.

Sacramento Police Officers Association ("SPOA") represents approximately 721 police officers, sergeants, community service officers, dispatchers and park rangers, on matters involving wages, benefits and

working conditions. Chief among SPOA's duties are protecting its retiree and working members' pension benefits.

The Sacramento County Deputy Sheriffs' Association ("SCDSA") represents over 1500 sworn and civilian Sheriff Department employees, including deputy sheriffs and sergeants. SCDSA strives to secure competitive compensation and benefits for its members. SCDSA is actively involved in political and concerted action to promote public safety and improve the law enforcement profession. SCDSA has an interest in protecting its members' pension benefits.

Ontario Police Officers' Association ("OPOA") represents approximately 190 sworn police officers, corporals, and detectives with the Ontario Police Department. OPOA is dedicated to safeguarding the rights, benefits, and privileges of its members. OPOA has an interest in protecting its members' pension benefits.

The El Dorado County Deputy Sheriffs' Association ("EDCDSA") is a professional organization of more than 170 sworn law enforcement officers employed by El Dorado County. EDCDSA works to attract and retain the best and brightest men and women to serve its community. EDCDSA has an interest in protecting its members' pension benefits.

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II

INTEREST OF THE AMICI CURIAE

The Amici Curiae collectively ("Amici") are labor organizations representing thousands of public safety employees who will be adversely impacted by the erosion of their constitutional protections under the Contracts Clause. Amici and their members are frequent targets of public entities' efforts to redirect revenues from funding promised benefits to more glamorous spending priorities under the auspices of "pension reform." Public agencies have tried to impair Amici's members' pension through a variety of schemes, such as declaring "fiscal emergencies," submitting ballot measures to cut pensions, amending the California Contracts Clause, and eliminating cost of living adjustments to retiree health benefits.

The appellate opinion invites future efforts to erode the vested rights doctrine and to conjure up new methods of reducing pension obligations. As the Los Angeles Times reported, in *Marin Association of Public Employees, et al.* (2016) 2 Cal.App.5th 674, the court "kind of rewrote the rule that made it impossible to reduce pensions without providing equivalent benefits." (California promised public employees generous retirements. Will the courts give government a way out?, Los Angeles Times, Maura Dolan, October 20, 2016.) In fact, a prominent law firm specializing in representing California public entities has publicized the *MAPE* decision as a "game changer" and noted "[i]f the decision isn't reversed by the California Supreme Court, it will

facilitate further reform efforts by the California Legislature and local pension systems." (Game changer for pension reform: Court allows 'reasonable' changes in benefits, California Employment Law Letter, August 22, 2016, Jeff Sloan and Susan Yoon, Renne Sloan Holtzman Sakai LLP.)

The instant case adopted *MAPE*'s decision and applied it to the elimination of airtime purchases. It represents the second of three First District decisions eviscerating the California Rule.

Additionally, amicus ACDSA and several of its members are petitioners in the ACDSA appeal, seeking to invalidate changes to the pension formulae used to calculate Alameda County employees' pension benefits. (*See Alameda County Deputy Sheriff's Association et al. v. Alameda County Employees' Retirement Assn. and Bd. of the Alameda County Employees Retirement Assn. et al.*, 19 Cal.App.5th 61.) In granting review in *MAPE,* this Court deferred further action in the case pending the First Appellate District's decision in the Alameda case. (*Marin Assn. of Public Employees v. Marin County Employees' Retirement Association* (2016) 210 Cal.Rptr.3d 15.) The First District issued its opinion in ACDSA's appeal on January 8, 2018. The ACDSA and its petitioner members petitioned this Court for review in that case on February 16, 2018.

Unless corrected, the holdings in this case, *MAPE*, and now *ACDSA* will create uncertainty in the efficacy of this Court's ruling in *Allen v. Board of Administration* (1983) 34 Cal.3d 114, thereby igniting new rounds of

litigation to resolve the appellate court's refusal to adhere to this Court's precedent. Thus, Amici have a strong interest in seeking confirmation of this Court's jurisprudence holding that "any modification of vested pension rights must be reasonable, must bear a material relation to the theory and successful operation of a pension system, and, when resulting in disadvantage to employees, must be accompanied by comparable new advantages." (*Id.* at 120.) Amici also urge this Court to clarify their members' right to a substantial pension, thereby closing the "reasonable pension" loophole created by the appellate opinion.

III

NEED FOR FURTHER BRIEFING

The Amici's attorneys have examined the briefs on file in this case and are familiar with the issues before this Court. The Amici negotiate wages, hours, working conditions, and post-employment benefits on behalf of their members, and therefore offer unique considerations other than those currently before the Court. In the proposed brief submitted herewith, Amici address the need to protect employees' vested rights from attack and explain the relationship between the legislature's power to reform pensions and the judiciary's power to prohibit agencies from impairing individual's employment benefits already earned.

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IV

CONCLUSION

For the foregoing reasons, Amici Curiae respectfully request this Court accept the accompanying brief for filing in this case.[1]

Respectfully submitted,

Dated: February 21, 2018

MASTAGNI HOLSTEDT, APC

DAVID E. MASTAGNI
ISAAC S. STEVENS
Attorneys for the Amici Curiae

[1] Pursuant to California Rule of Court 8.200(c)(3), no party to this case authored the accompanying amicus brief in whole or in part, and no party other than the amici made any monetary contribution intended to fund the preparation or submission of the brief.

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INTRODUCTION

Amici Curiae urge this Court to affirm its longstanding vested rights doctrine. In this case, the First District Court of Appeal opined that a detrimental change in employees' vested pension benefits need not be accompanied by a new, offsetting advantage to survive constitutional scrutiny. This case is one of three cases in which the First Appellate District has leveled this attack – it reached similar conclusions in *Marin Association of Public Employees, et al.* (2016) 2 Cal.App.5th 674 ("*MAPE*"), and *Alameda County Deputy Sheriffs' Association v. Alameda County Employees' Retirement Association* (2018) 19 Cal.App.5th 61 ("*ACDSA*").

The appellate court's decision echoed the decision in *MAPE*, upending nearly 70 years of jurisprudence protecting public employees' pension rights since *Kern v. City of Long Beach* (1947) 29 Cal.2d 848. (Opinion, p.14.) Specifically, the appellate court ruled that any detriment to the employees' pension benefits PEPRA imposed did not need to be offset by a new advantage to pass constitutional scrutiny. This eviscerated the California Rule, which requires detrimental changes be offset by comparable new advantages.

Likewise, the appellate court's decision ignored decades of federal and state Contract Clause jurisprudence prohibiting government entities from impairing their contractual obligations to save money. It also ignored the

requirement that any impairment of a government's contractual obligation be temporary, with interest running during the term of the deferral. The State seeks to convert employees' vested pension rights into a piggy bank it can use to fund other legislative priorities, so long as it leaves employees a "reasonable" pension for the employees who worked decades to earn it.

Amici ask the Court to reverse the appellate court and affirm the continued existence of the California Rule, protecting public employees' pensions from unjustified reductions.

II

PROCEDURAL HISTORY

The Petitioners are state employees and their labor union, whose pension benefits are administered by Respondent California Public Employees' Retirement System ("PERS.") They filed this case in 2013, after the Legislature enacted the Public Employees' Pension Reform Act ("PEPRA.") PEPRA repealed Government Code section 20909, a pension statute, which previously allowed state and local employees to purchase additional service credit towards their retirement benefits.

Petitioners sued, seeking to compel PERS to allow future purchases of service credits for qualifying employees who were employed prior to the enactment of PEPRA.

The trial court held a hearing on the petition in February 2014, and issued a final order on the petition in June, 2014, denying it. The Petitioners

subsequently appealed the matter to the First District Court of Appeal. The appellate court issued its opinion in December 2016.

The appellate court upheld the trial court's ruling, finding the employees did not have a vested right to purchase service credit under Section 20909. Despite finding the employees did not have a vested right – a determination that should end the constitutional analysis of whether there was an impairment – the court went on to discuss whether the Contracts Clause would bar the State from eliminating the opportunity to purchase service credit without providing a new offsetting advantage. In so doing, the court acknowledged with approval the appellate decision in *MAPE*, asserting that the Contracts Clause did not require the State to provide an offsetting new advantage when it modified employees' pension benefits. (Opinion, p. 14.) According to the court, what matters is that a reasonable benefit remain after any detrimental changes.

This Court has granted review of the appellate court's ruling in *MAPE*, deferring further proceedings in that case on the outcome of the *ACDSA* appeal. The appellate court issued its decision in the *ACDSA* appeal in January 2018. (*ACDSA*, *supra* 19 Cal.App.5th 61.)

This Court granted review in this case on April 12, 2017. (*Cal Fire Local 2881 v. California Public Employees Retirement System* (2017) 216 Cal.Rptr.3d 119.)

III

ARGUMENT

For years, this Court has protected public employees' pension rights, ruling that any detrimental changes to an employee's vested pension benefits must be accompanied by an offsetting new advantage to survive constitutional scrutiny. (*See Allen v. City of Long Beach* (1955) 45 Cal.2d 128 ("*Allen I*"); *Allen v. Board of Administration* (1983) 34 Cal.3d 114 ("*Allen II*.")) Indeed, this Court in *Allen II* specifically said any detrimental changes "must" be offset by new advantages. Nevertheless, the appellate court followed its own decision in *MAPE,* which effectively overturned *Allen v. Board of Administration, supra,* and its progeny based on its assertion that this Court did not understand or intend for its use of the term "must" to be afforded its "literal" meaning. (*See, MAPE, supra,* 2 Cal.App.5th. at 698.) Thus, the appellate court changed the requirement that any detriment *must* be offset by a new advantage to a mere suggestion that it *should* be offset by one. The Court should reverse the appellate court's decision and confirm the continued validity of its vested rights doctrine, requiring detrimental changes to be offset by new advantages.

A. THE APPELLATE COURT OPINION ERODES THE CALIFORNIA RULE

Over sixty years ago, this Court held "[t]o be sustained as reasonable, alterations of employees' pension rights must bear some material relation to

the theory of a pension system and its successful operation, and changes in a pension plan which result in disadvantage to employees should be accompanied by comparable new advantages." (*Allen I, supra,* 45 Cal.2d at 131.) Consistent with its authority, in 1983 this Court confirmed that the provision of comparable new advantages was mandated when pension changes resulted in new disadvantages to employees. (*Allen II, supra*, 34 Cal.3d at 120.)

Despite three decades of ensuing case law upholding this jurisprudence, an inferior appellate court purports to have corrected this Court and has contravened its *stare decisis*. The Court should reject the appellate court's efforts to erode its vested rights doctrine.

1. PENSION BENEFITS ARE DEFERRED COMPENSATION

Pension benefits are deferred compensation. *(Thorning v. Hollister School Dist*. (1992) 11 Cal.App.4th 1598, 1606-7.) Public employees obtain a vested contractual right to earn retirement benefits upon accepting employment. (*Betts v. Board of Administration* (1978) 21 Cal.3d 859, 864; *Kern v. City of Long Beach* (1947) 29 Cal.2d 848, 853; *Miller v. State of Cal.* (1977) 18 Cal.3d 808, 817; *Carman v. Alvord* (1982) 31 Cal.3d 318, 325.) They are entitled to continue earning additional retirement benefits through continued service under the terms originally promised by the employer. (See *Legislature v. Eu* (1991) 54 Cal.3d 492, 530; *Pasadena Police Officers Assn. v. City of Pasadena* ("*Pasadena*") (1983) 147 Cal.App.3d 695.) Public

employees also have a vested right to any additional retirement benefits established during their employment. (*County of Orange v. Assn. of Orange County Deputy Sheriffs* (2011) 192 Cal.App.4th 21, 41-42.)

Pension benefits are an "element of compensation" and a "vested contractual right" that cannot be removed "without impairing a contractual obligation of the employing public entity." (*Betts, supra,* at 863-64.) Once vested, the employer can only make reasonable modification to the pension benefits. (*Maffei v. Sacramento County Employees' Retirement System* (2002) 103 Cal.App.4th 993, 999-1000.)

To be sustained as reasonable, alterations of employees' pension rights must bear some material relation to the theory of a pension system and its successful operation, and changes in a pension plan which result in a disadvantage to employees must be accompanied by comparable new advantages. (*Allen I, supra,* 34 Cal.2d at 131; *Betts, supra*, 21 Cal.3d at 864; *Maffei, supra,* 103 Cal.App.4th at 999-1000.) Thus, under the California Constitution, vested retirement benefits can be increased, but not reduced. (See *Protect Our Benefits v. City and County of San Francisco* (2015) 235 Cal.App.4th 619.) The First District's decisions in this case, *MAPE*, and *ACDSA* would eliminate the requirement that disadvantages be offset by corresponding new advantages.

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2. THE APPELLATE COURT ELIMINATED THE REQUIREMENT FOR AN OFFSETTING ADVANTAGE

In upholding PEPRA's elimination of air time, the appellate court reversed *Allen II* by adopting the vested rights reasoning of *MAPE,* despite this Court granting review of that case. Just as it did in *MAPE,* the appellate court in this case parsed the language of *Allen* to nullify its holding that any changes to pensions that result in a disadvantage be offset by comparable new advantages.

The appellate court adopted the analysis set forth in *MAPE,* which hinged on the fact that the *Allen I* court said "changes in a pension plan which result in disadvantage to employees should be accompanied by comparable new advantages." (*MAPE*, *supra*, 2 Cal.App.5th at 697, *citing Allen I, supra,* 45 Cal.2d at 131.) According to the appellate court, the Court's use of the word "should" did not require detrimental changes to be offset by comparable advantages.

In reaching this conclusion, the court brushed aside this Court's subsequent citation to the *Allen I* opinion as *requiring* disadvantages to be offset by comparable advantages. In 1983, this Court cited *Allen I* when opining that any detrimental change "*must* be accompanied by comparable new advantages." (*Allen II*, *supra*, 34 Cal.3d at 120 (emphasis added.)) In so doing, the court concluded this Court did not really mean "must" when it used the word "must" in *Allen II*. (Opinion, p. 14.) This assertion lacks merit.

It also gives rise to a conflict between the First District's new pension jurisprudence and this Court's decades of vested rights case law.

Likewise, the appellate court's decision bolsters the conflict regarding pension benefit modifications within the First District itself – a fact the court acknowledged in *MAPE*. (*MAPE, supra*, 2 Cal.App.5th. at 699 ("We do not deem ourselves bound by expressions in Court of Appeal opinions – including our own in *In re Retirement Cases*.")) and *ACDSA* (*ACDSA* Op., *supra* at 60 ("We believe that the *Marin* court improperly relied on its general sense of what a reasonable pension might be, rather than acknowledging that the Supreme Court has expressly defined a reasonable pension as one which is subject only to *reasonable* modification.")

These cases are also incompatible with the appellate court's previous decision in *Protect Our Benefits v. City and County of San Francisco* (2015) 235 Cal.App.4th 619, where the court struck down a ballot measure making cost of living adjustments for pension benefits contingent on the retirement system being fully funded. In that case, the court found the funding requirement could not be sustained as reasonable because "no comparable advantage was offered to pensioners or employees in return." (*Id*. at p. 630.) That conclusion cannot be reconciled with this opinion's ratification of *MAPE*.

The lower court's attempt to buttress its defective reasoning in *MAPE* represents a radical departure from the last seventy years of California

jurisprudence on pensions by allowing the State to change pension rights without providing any new advantages. The court provides no appreciable guidance on the limits of the new impairment powers it bestowed public entities in this case and *MAPE*. The Court should reverse the appellate court's decision and affirm it meant "must" when it said detrimental changes must be offset by new advantages.

3. THE APPELLATE COURT ERRONEOUSLY FOCUSED ON THE REASONABLENESS OF THE REMAINING PENSION BENEFIT – NOT THE MODIFICATION'S REASONABLENESS

Citing *MAPE*, the appellate court opined that pensioners were entitled "only to a 'reasonable' pension, not one providing fixed or definite benefits immune from modification or elimination by the governing body." (Opinion, p. 16.) According to the appellate court, the petitioners failed in part because they made not showing that, following the elimination of airtime, their right to a "reasonable" pension was lost. (*Id*.) The court subjected the wrong thing to a reasonableness analysis. The question is not whether the remaining benefit is reasonable – it is whether the modification itself is reasonable.

Indeed, the State argues for a rule that would allow retroactive reductions in pensions already earned. According to the State, "so long as an employee retains his or her right to a substantial or reasonable pension, changes to a pension plan before the employee retires do not amount to an unconstitutional impairment. (Intervenor and Respondent State of

California's Answer Brief on the Merits, p. 43.) This is a radical position. Taking the State's argument to its logical conclusion, the State can change an employee's pension benefits however it wants – with no distinction between retroactive and prospective changes – so long as the employee gets whatever the courts deem a "reasonable" pension upon retirement.

The appellate court in *ACDSA* recognized this error, stating "we believe that the *Marin* court improperly relied on its general sense of what a reasonable pension might be, rather than acknowledging that the Supreme Court has expressly defined a reasonable pension as one which is subject only to *reasonable* modification." (*ACDSA* Opinion, p. 60.)

The appellate court in this case should have focused on whether eliminating the right to purchase airtime service credit was a reasonable modification to employees' pension benefits. This Court should reverse the appellate court's decision and fix its flawed analysis.

B. SAVING MONEY IS NOT A LEGITIMATE PUBLIC PURPOSE JUSTIFYING AN IMPAIRMENT

The appellate court's reference to financial issues the State faced when enacting PEPRA highlights an additional problem with the opinion in this case. The appellate court ignored the fact that saving money is not a legitimate public purpose to justify impairing the petitioners' vested rights. In fact, the court noted on several occasions the State's purported need for pension reform, citing with approval *MAPE*'s assertion that "the catalyst for

the Pension Reform Act was dire financial predictions necessitating urgent and fundamental changes to improve the solvency of various pension systems." (Opinion, p. 13 (*citing MAPE*, *supra* 2 CalApp.5th at 704-05.)

This Court and the U.S. Supreme Court have repeatedly stated that saving money is not a legitimate public purpose that justifies impairing the government's contractual obligations. "If a State could reduce its financial obligations whenever it wanted to spend the money for what it regarded as an important public purpose, the Contract Clause would provide no protection at all." (*U.S. Trust Co. of New York v. New Jersey* (1977) 431 U.S. 1, 26; s*ee also Abbot v. City of Los Angeles* (1958) 50 Cal.2d 438, 455 ("Rising costs alone will not excuse the city from meeting its contractual obligations, the consideration for which has already been received by it."); *Sonoma County Organization of Public Employees v. County of Sonoma* (1979) 23 Cal.3d 296, 307-09; *California Teachers Assn. v. Cory* (1984) 155 Cal.App.3d 494, 511.)

The State's claim that "at stake was the public trust in the government's prudent use of limited taxpayer funds" lacks merit. Allowing the State to impair employees' pension rights merely to save money would radically depart from decades of state and federal jurisprudence. Indeed, the Ninth Circuit has noted "in the last thirty-five years, no Ninth Circuit or Supreme Court case has found a statute or ordinance necessary when the law in question altered a financial term of an agreement to which a state entity

was a party." (*So. Cal. Gas Co. v. City of Santa Ana* (9th Cir. 2003) 336 F.3d 885, 897.)

The government can always find things it would rather spend money on that honoring its obligations. The Contract Clause, however, does not let the government treat its employees' pensions as a piggy bank to dip into whenever it wants to spend money on different legislative priorities. Rather, the State must raise taxes or save revenue other ways. The State cannot credibly claim it had no other way to obtain money for its other projects. Indeed, shortly after the governor signed PEPRA into law, Proposition 30 was passed by the voters to raise additional revenue. (*See* Answer Brief, p. 47, footnote 15.)

Simply put, the government cannot merely cite financial difficulties to impair its contractual obligations to provide pension benefits to its employees.[2] Accordingly, the Court should vacate the appellate court's decision in this case.

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[2] Moreover, as the petitioners point out, even if the government could use a financial crisis to justify cutting pension benefits, the appellate court failed to cite any legislative findings showing a fiscal crisis necessitating the elimination of airtime purchases. (*See* Petitioners' Opening Brief on the Merits, p. 42.)

C. THE APPELLATE COURT IGNORES THE CONSTITUTIONAL REQUIREMENT THAT IMPAIRMENTS BE TEMPORARY

By allowing a vested pension right to be eliminated without a corresponding new advantage, the appellate court also ignored the fact that an impairment of a vested right must be temporary. It is well established that, to survive constitutional scrutiny, an impairment must be "a temporary measure, during which time the vested contract rights are not lost but merely deferred for a brief period, interest running during the temporary deferment. (*See Olson v. Cory* (1980) 27 Cal.3d 532, 539 (*citing Sonoma County Public Employees v. County of Sonoma* (1979) 23 Cal.3d 296, 4.))

Here, the appellate court sanctioned the elimination of the right to purchase airtime indefinitely, with no eventual restoration, and without any interest running during the period it was eliminated. This represents a permanent impairment of the appellants' vested rights. The Court should reverse the appellate court's decision and affirm the longstanding rule that impairments must be temporary.

IV

CONCLUSION

This case, along with *MAPE* and *ACDSA* represent an unprecedented attack on public pensions in California. The State seeks to nullify decades of constitutional and vested rights doctrine, all in the name of government power to break contracts and divert money to other priorities. If, as the

appellate court stated, there was no vested right to purchase airtime service credit, there was no basis to upend longstanding California and federal Contract Clause precedent. If the Court determines there was no vested right to purchase airtime, it should nonetheless correct the appellate court's errors regarding the vested rights doctrine. Otherwise, the Court should reverse the appellate court's decision and hold that the State unconstitutionally impaired the Petitioners' vested pension rights.

Respectfully submitted,

Dated: February 21, 2018

MASTAGNI HOLSTEDT, APC

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Attorneys for the Amici Curiae

CERTIFICATE OF WORD COUNT

Pursuant to Rule 8.204(c)(1) of the California Rules of Court, I certify that this brief consists of 4,947 words, as counted by the computer program used to generate the document.

Dated: February 21, 2018

MASTAGNI HOLSTEDT, APC

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PROOF OF SERVICE

SHORT TITLE OF CASE: *Local 2881 v. CalPERS, et al.*
SUPREME COURT CASE NO.: S239958

I am employed in the County of Sacramento, State of California. I am over the age of eighteen years and not a party to the above-entitled action. My business address is 1912 I Street, Sacramento, California 95811-3151. On the date below, I served the following document(s):

■ **APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF AND [PROPOSED] BRIEF OF AMICICURIAE IN SUPPORT OF PETITIONERS CAL FIRE LOCAL 2881, et al.**

Addressed as follows:

SEE ATTACHED SERVICE LIST

X BY ELECTRONIC SERVICE: I certify that all participants in the case are registered TRUEFILING users and that service will be provided by TRUEFILING to parties' attorneys of record, pursuant to Local Rule 9(a); and,

And,

Clerk of the Court of Appeal
First District Court of Appeal
350 McAllister Street
San Francisco, CA 94102

Clerk of the Superior Court
Alameda County Superior Court
René C. Davidson Courthouse
1225 Fallon Street
Oakland, California 94612

X **BY U.S. MAIL**. By placing a true copy thereof enclosed in a sealed envelope(s) addressed as above, and placing each for collection and mailing on **February 21, 2018**, following ordinary business practices. I am "readily familiar" with the firm's practice of collection and processing of correspondence for mailing. Under that practice, it would be deposited with the United States Mail today, with postage thereon fully prepaid at Sacramento, California in the ordinary course of business.

I declare under penalty of perjury, under the laws of the state of California, that the foregoing is true and correct and executed on **February 21, 2018**, at Sacramento, California.

PATRICK R. BARBIERI

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