



1 ISAAC S. STEVENS, ESQ. (SBN 251245)
 2 MASTAGNI, HOLSTEDT, AMICK
 3 MILLER & JOHNSEN
 4 *A Professional Corporation*
 5 1912 I Street
 Sacramento, California 95811-3151
 Telephone: (916) 446-4692
 Facsimile: (916) 447-4614

FILED
 ALAMEDA COUNTY

DEC 13 2012

By *[Signature]*

6 Attorneys for Plaintiffs
 7 ALAMEDA COUNTY DEPUTY SHERIFFS' ASSOCIATION;
 JON RUDOLPH; JAMES D. NELSON; ROCKY MEDEIROS;
 DARLENE HORNSBY; ROBERT BROCK

8 SUPERIOR COURT OF CALIFORNIA
 9 COUNTY OF ALAMEDA

11 ALAMEDA COUNTY DEPUTY	}	CASE NO.: RG12658890
12 SHERIFFS' ASSOCIATION, <i>et al.</i>		
13 Plaintiffs/Petitioners,	}	STIPULATION AND [PROPOSED] ORDER GRANTING STAY PENDING FINAL JUDGMENT ON THE MERITS
14 v.		
15 ALAMEDA COUNTY EMPLOYEES'		
16 RETIREMENT ASSOCIATION, <i>et al.</i>	}	Date: December 13, 2012 Time: 9:00 a.m. Dept.: 31
17 Defendants/Respondents.		

18 WHEREAS, Plaintiffs ALAMEDA COUNTY DEPUTY SHERIFFS' ASSOCIATION, JON
 19 RUDOLPH, JAMES D. NELSON, ROBERT BROCK, ROCKY MEDEIROS, and DARLENE
 20 HORNSBY (hereafter referred to collectively as "Plaintiffs") filed the above captioned petition for
 21 writ of mandate on December 6, 2012;

22 WHEREAS, Defendants ALAMEDA COUNTY EMPLOYEES' RETIREMENT
 23 ASSOCIATION ("ACERA") and ALAMEDA COUNTY EMPLOYEES' RETIREMENT
 24 ASSOCIATION BOARD (hereafter referred to collectively as "Defendants") administer retirement
 25 benefits for Plaintiffs RUDOLPH, NELSON, BROCK, MEDEIROS, HORNSBY, and other active,
 26 deferred and retired employees of the County of Alameda;

27 WHEREAS, Defendants currently include in members' "final compensation" for the
 28 purposes of calculating pension benefits a portion of the members' vacation and sick-leave accruals

1 received in cash;

2 WHEREAS, Defendants contend AB 197 requires ACERA to modify this policy so as to
3 exclude some of the vacation and sick leave accruals received in cash from "final compensation" on
4 and after January 1, 2013;

5 WHEREAS, Defendants have announced that, effective January 1, 2013, ACERA will no
6 longer treat as "compensation earnable" some of the amounts of pay ACERA members receive for
7 cashing out vacation and sick leave beyond what the members cashed out in each year of their final
8 compensation period, which amounts have been included in "final compensation" to date;

9 WHEREAS, Defendants currently treat as "compensation earnable" and include in members'
10 "final compensation" for the purposes of calculating pension benefits compensation paid under
11 certain pay codes;

12 WHEREAS, Defendants' contend AB 197 requires ACERA to modify this policy so as to
13 exclude certain pay codes (the "Subject Pay Codes") from "final compensation" on and after January
14 1, 2013;

15 WHEREAS, Defendants have announced that, effective January 1, 2013, compensation paid
16 under the Subject Pay Codes will not be treated as "compensation earnable;"

17 WHEREAS, it appears from the verified petition that Plaintiffs are beneficially interested
18 parties in this proceeding;

19 WHEREAS, this is a proper case for granting a stay to preserve the status quo and, unless
20 the stay described below is granted, great and irreparable harm may be suffered by Plaintiffs and the
21 ACERA members they represent before judgment is entered in the case;

22 WHEREAS, the parties agree that a stay to preserve the status quo for all ACERA members
23 first becoming members on or before December 31, 2012 pending entry of judgment in the case may
24 be entered;

25 THEREFORE, the parties, by and through their respective attorneys of record, hereby agree
26 and stipulate as follows:

27 1. Defendants' implementation of all aspects of AB 197 that concern the definition of
28 "compensation earnable" shall be stayed and remain stayed for sixty (60) days following the date of

1 entry of judgment in this action; *as to all ACERA members first becoming*
2 *members on or before December 31, 2012.*

3 2. Defendants' proposed changes to its treatment of vacation cash out, sick leave cash
4 out, and compensation paid under the Subject Pay Codes as "compensation earnable" shall be stayed
5 and remain stayed for sixty (60) days following the date of entry of judgment in this action;

6 3. When the stay is dissolved, it shall be dissolved effective on that date, not nunc pro
7 tunc to January 1, 2013;

8 4. If this matter is disposed of before judgment is entered on the merits, the stay will
9 remain in place until the Court issues an order dissolving the stay, following a noticed hearing.

10 5. The hearing on the merits of Petitioners' claims will be scheduled as expeditiously
11 as possible, and submitted on stipulated facts to the greatest extent possible. Subject to Court
12 agreement, the hearing will be bifurcated into two phases: Phase One shall address Petitioners'
13 constitutional challenges to the validity and enforceability of AB 197. Phase Two shall address
14 Petitioners' other claims and shall be briefed and heard following the Court's ruling on Phase One.

15 6. Petitioners are required to notify real parties in interest, ~~and the Court will liberally~~
16 ~~grant requests for intervention.~~

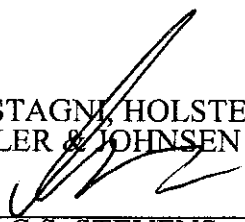
17 7. In the event of disposition of this matter prior to entry of judgment on the merits, the
18 *parties shall stipulate to the dissolution of the stay.*
19 ~~stay will be dissolved~~ by further order of this Court, following a noticed hearing.

20 8. The parties recognize that the Court reserves the right to modify this Order for good
21 cause, upon notice and a hearing.

22 IT IS SO STIPULATED:

23 Dated:

MASTAGNI, HOLSTEDT, AMICK,
MILLER & JOHNSEN

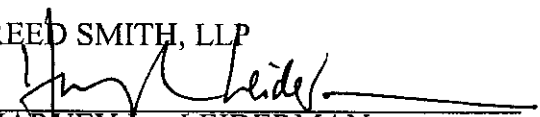


ISAAC S. STEVENS
Attorneys for Plaintiffs

26 Dated:

12/12/12

REED SMITH, LLP

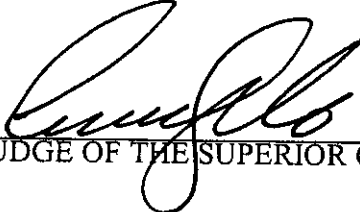


HARVEY L. LEIDERMAN
Attorneys for Defendants ACERA and
ACERA Board

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO ORDERED:

Dated: **DEC 13 2012**



JUDGE OF THE SUPERIOR COURT

EVELIO M. GRILLO