

1 NOSSAMAN LLP
2 ASHLEY K. DUNNING (SBN 185014)
3 adunning@nossaman.com
4 AALIA TAUFIQ (SBN 317787)
5 ataufiq@nossaman.com
6 50 California Street, 34th Floor
7 San Francisco, CA 94111
8 Telephone: 415.398.3600
9 Facsimile: 415.398.2438
10
11 Attorneys for Respondent SAN BERNARDINO COUNTY
12 EMPLOYEES' RETIREMENT ASSOCIATION
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SAN BERNARDINO COUNTY

EMPLOYEES' RETIREMENT ASSOCIATION

SAN BERNARDINO COUNTY SHERIFF'S
EMPLOYEES' BENEFIT ASSOCIATION,

Appellant,

vs.

SAN BERNARDINO COUNTY
EMPLOYEES' RETIREMENT
ASSOCIATION,

Respondent.

**RESPONDENT SAN BERNARDINO
COUNTY EMPLOYEES' RETIREMENT
ASSOCIATION'S RESPONSIVE BRIEF
IN OPPOSITION TO APPELLANTS'
OPENING BRIEF RE: PENSIONABILITY
OF ANNUAL LEAVE CASH-OUTS**

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION AND SUMMARY OF ARGUMENT	5
I. BACKGROUND	7
A. Under the legal framework governing SBCERA and its Board, SBCERA must follow the retirement statutes as written and interpreted by the courts.....	7
B. Retirement allowances for Legacy members are calculated based on “compensation earnable,” which Section 31461—as amended by PEPR—defines.....	7
C. Before <i>Alameda</i> , SBCERA included excess cash-outs in “compensation earnable.”	9
D. The <i>Alameda</i> decision announces that the PEPR amendments to Section 31461 preclude SBCERA from including leave cash-outs in excess of members’ Annual Cash-out Limits in “compensation earnable,” and SBCERA implements the Supreme Court’s ruling.....	10
II. ARGUMENT	11
A. SBCERA must follow the plain meaning of the retirement statutes, as interpreted by the courts.....	11
B. As interpreted by the Supreme Court, Section 31461 excludes leave cash-outs that exceed Annual Cash-out Limits from “compensation earnable.”	12
C. The Supreme Court’s interpretation of Section 31461 in <i>Alameda</i> was not dicta.....	13
D. <i>Alameda</i> confirms that the Legislature intended to restrict annual leave cash-outs included in “compensation earnable” to a calendar year.....	15
III. CONCLUSION.....	16

TABLE OF AUTHORITIES

	Page(s)
California Constitution	
Article XVI, §17	7
California Cases	
<i>Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Association</i> (2020) 9 Cal.5th 1032	<i>passim</i>
<i>Association for Retarded Citizens v. Department of Developmental Services</i> (1985) 38 Cal.3d 384	11
<i>Hubbard v. Superior Court</i> (1997) 66 Cal.App.4th 1163	15
<i>Leider v. Lewis</i> (2017) 2 Cal.5th 1121	13, 14
<i>Oden v. Board of Administration</i> (1994) 23 Cal.App.4th 194	11
<i>Sonic-Calabasas A, Inc. v. Moreno</i> (2013) 57 Cal.4th 1109	13
<i>Whitcomb Hotel, Inc. v. California Employment Com.</i> (1944) 24 Cal.2d 753	11
California Statutes	
Government Code	
§ 7522 et seq.	6
§ 7522.04, subd. (f)	5, 8
§ 7522.32, subd. (b)	12
§ 7522.34, subd. (b)(5).....	8
§ 31450 et seq.	7
§ 31461.....	<i>passim</i>
§ 31461, subd. (a).....	8
§ 31461, subds. (b)(1)	8
§ 31461, subds. (b)(2).....	<i>passim</i>
§ 31461, subds. (b)(4).....	<i>passim</i>

Exhibit C: Page 4

§ 31462.....	8
§ 31462, subd. (a).....	8, 12
§ 31462, subd. (b)	12
§ 31462.1.....	8, 12
§ 31462.1, subd. (a).....	12
§ 31462.1, subd. (b)	12

Other Authorities

Assem. Com. on Public Employees, Retirement and Social Security, Analysis of Assem. Bill No. 340 (2011–2012 Reg. Sess.)	16
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I. INTRODUCTION AND SUMMARY OF ARGUMENT

Appellant San Bernardino County Sheriff’s Employees’ Benefit Association (“Appellant” or “SEBA”) challenges, though this administrative appeal, the decisions of the Board of Retirement (“Board”) of Respondent San Bernardino County Employees’ Retirement Association (“SBCERA”) regarding the pensionability of “straddled” annual leave cash-outs in connection with SBCERA’s implementation of *Alameda County Deputy Sheriff’s Association v. Alameda County Employees’ Retirement Association* (2020) 9 Cal.5th 1032 (“*Alameda*”). Specifically, SEBA challenges SBCERA’s limitation of the amount of annual leave cash-outs included as “compensation earnable,” for purposes of determining a member’s retirement allowance, to that which is earned and payable in each 12-month period of members’ final average compensation periods, regardless of when those amounts are reported to SBCERA or paid to the member.

All SBCERA members have limitations—set by their terms of employment—as to the amount of unused annual leave that they are permitted by their employers to receive in cash in a calendar year: an Annual Cash-out Limit. When a Legacy¹ member retires, SBCERA includes an amount of annual leave cash-out as “compensation earnable” received during that member’s elected “final average compensation” (“FAC”) period—a 12-month or 36-month period used to determine a member’s retirement allowance. When a member elects an FAC period that “straddles” calendar years—for example, if that period runs from July 1 of Year 1 to June 30 of Year 2—a member may cash out leave during that FAC period in excess their Annual Cash-out Limit (“excess cash-out”) by utilizing the Annual Cash-out Limit for both Year 1 and Year 2. SBCERA formerly included excess cash-outs in Legacy members’ “compensation earnable” prior to the California Supreme Court’s July 30, 2020 *Alameda* ruling.

In *Alameda*, the Court upheld the constitutionality of certain amendments to the “compensation earnable” statute—Government Code section 31461—that took effect on January

¹ “Legacy member” refers to an individual who was a member of a public retirement system in California prior to January 1, 2013, who is not a “new member” (aka, “PEPRA member”) under Government Code section 7522.04, subdivision (f).

1, 2013, via the Public Employees’ Pension Reform Act of 2013 (Gov. Code § 7522 et seq.²; “PEPRA”). The Court further held that those PEPRA amendments “prevent” retiring employees from using a “straddled” calculation period to include excess cash-outs in their “compensation earnable.” (*Id.* at pp. 1062–63.) Based on the Supreme Court’s clarification of the amended retirement statutes, SBCERA resolved, effective July 30, 2020, to exclude from “compensation earnable” leave cash-outs that exceed what is *earned and payable* in *each* 12-month period during a member’s FAC period, regardless of when that leave cash-out is reported or paid. (See Declaration of Debby Cherney (“Cherney Decl.”), ¶3, Ex. A [*Alameda* Implementation Resolution].)

SEBA argues that SBCERA’s exclusion of excess cash-outs from “compensation earnable” violates both the plain meaning of Section 31461 and the Supreme Court’s interpretation of that statute in *Alameda*. SEBA proffers an interpretation of the PEPRA amendments that simply ignores what the Supreme Court has said—recently and unanimously—about them. SEBA then argues that the relevant portion of *Alameda* is mere dicta rather than a holding, and further that the “actual holding” of *Alameda* indicates no legislative intent to restrict annual leave cash-outs included in “compensation earnable” to a calendar year. SEBA is incorrect on both counts.

The plain meaning of Section 31461—as interpreted by the Supreme Court—clearly excludes from Legacy members’ “compensation earnable” any leave cash-outs exceeding a member’s Annual Cash-out Limit regardless of when the payments are “reported or paid.” The Court’s discussion of straddling and the PEPRA amendments is not dicta. The *Alameda* Court determined that the PEPRA amendments to Section 31461 were constitutional on their face and as applied. To arrive at that conclusion, the Court first had to analyze the *purpose* of those amendments, and it determined in the course of that analysis that they prohibit CERL systems

² All statutory references hereinafter are to the California Government Code, unless otherwise stated.

1 from including in “compensation earnable” any leave cash-outs that exceed members’ Annual
2 Cash-out Limits. Its holding is binding on SBCERA.

3 **I. BACKGROUND**

4 **A. Under the legal framework governing SBCERA and its Board, SBCERA**
5 **must follow the retirement statutes as written and interpreted by the courts.**

6 SBCERA and its Board are governed by article XVI, section 17, of the California
7 Constitution, the County Employees Retirement Law of 1937 (Gov. Code §§31450 et seq.;
8 “CERL”), PEPR, and various other laws. SBCERA’s primary responsibility is to provide
9 lifetime retirement benefits to eligible SBCERA members employed by the County and other
10 participating employers pursuant to the retirement statutes. The California Constitution vests the
11 Board with “plenary authority” and “fiduciary responsibility” for the administration of SBCERA.
12 (Cal. Const., art. XVI, §17.) The Supreme Court has clearly stated that administration of a
13 retirement system requires boards “to interpret and apply the provisions of CERL” and other
14 applicable statutes, but does not allow boards to go beyond those statutes: “[t]he task of a county
15 retirement board is not to design the county’s pension plan but to implement the design enacted
16 by the Legislature[.]” (*Alameda, supra*, 9 Cal.5th at p. 1066.)

17 **B. Retirement allowances for Legacy members are calculated based on**
18 **“compensation earnable,” which Section 31461—as amended by PEPR—**
defines.

19 CERL, as amended by PEPR, governs the calculation of SBCERA members’ retirement
20 allowances based on the statutory retirement formula applicable to them and three variables that
21 are particular to each retiring member: “the employee’s (1) age at retirement, (2) years of
22 service, and (3) final compensation.” (*Alameda, supra*, 9 Cal.5th at p. 1056.) Only “final
23 compensation” is at issue here.

24 Two different statutory regimes determine “final compensation” for two groups of
25 SBCERA members depending on the date those members began participating in a qualifying
26 retirement system. “Legacy members,” at issue in this appeal, are SBCERA members who were
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members of a qualifying California public retirement system before January 1, 2013.³ For Legacy members, SBCERA determines “final compensation” based on members’ “compensation earnable,” as defined in Section 31461, over a three- or one-year FAC Period. (§§31462, 31462.1.)⁴ Legacy members may choose the FAC period that SBCERA uses to define “final compensation.” (§ 31462, subd. (a).)

Section 31461 defines Legacy members’ “compensation earnable” as “the average compensation as determined by the board, for the period under consideration upon the basis of the average number of days ordinarily worked by persons in the same grade or class of positions during the period, and at the same rate of pay.” (§ 31461, subd. (a).) PEPRAs amended this statute by adding subdivision (b), which excludes certain items from “compensation earnable.” Excluded pay items include, but are not limited to, the following:

“(1) Any compensation determined by the board to have been paid to enhance a member’s retirement benefit under that system. . . .

(2) Payments for unused vacation, annual leave, personal leave, sick leave, or compensatory time off, however denominated, whether paid in a lump sum or otherwise, *in an amount that exceeds that which may be earned and payable in each 12-month period during the final average salary period, regardless of when reported or paid.* . . .

(4) Payments made at termination of employment, except those payments that do not exceed what is *earned and payable in each 12-month period during the final average salary period, regardless of when reported or paid.*”

(§ 31461, subds. (b)(1), (2), (4), emphasis added.)

³ “PEPRA members,” on the other hand, are SBCERA members who first joined the retirement system on or after January 1, 2013, and who are not eligible for reciprocity to be Legacy members. (§7522.04, subd. (f).) PEPRAs are not at issue with respect to this appeal, because, by law, SBCERA may not include *any* leave cash-outs in their retirement allowance calculations. (§7522.34, subd. (b)(5).)

⁴ Section 31462 provides for a three-year final compensation period, and it is the statute that applies in all CERL systems *unless* the optional statute, Section 31462.1, has been adopted by a board of supervisors. Section 31462.1, if made “operative in” a county by “resolution adopted by a majority vote” of the board of supervisors, defines final compensation as “any year elected by a member”

1 **C. Before *Alameda*, SBCERA included excess cash-outs in “compensation**
2 **earnable.”**

3 Legacy members receive cash payments for accrued but unused hours of vacation leave
4 through a process referred to as “leave cash-outs.” SBCERA historically has included leave
5 cash-outs made during a member’s FAC Period into that member’s “compensation earnable.”
6 SBCERA members’ terms of employment generally limit the number of hours that SBCERA
7 members may cash out in a calendar year, which limitation is referred to herein as an “Annual
8 Cash-out Limit.” Annual Cash-out Limits differ among employers and/or labor unions, and may
9 even differ among employees of the same employer and/or members of the same labor union,
10 depending on their date of hire and seniority. Attached to the Declaration of SBCERA CEO
11 Debby Cherney are three examples of differing Annual Cash-Out Limit provisions within the
12 Memoranda of Understanding (“MOU”) that define certain members’ terms of employment.
13 (See Cherney Decl., ¶¶ 4, 5, 6, Exs. B, C, D [MOU excerpts].) Many SBCERA members accrue
14 annual leave in excess of their Annual Cash-out Limit.

15 Because FAC Periods are not tied to calendar years and need not “align” with them, FAC
16 Periods for members with a one-year FAC Period may include portions of, or “straddle,” two
17 calendar years (e.g., July 1 of Year 1 to June 30 of Year 2). Similarly, FAC Periods for members
18 with a three-year FAC Period may include portions of four calendar years (e.g., July 1 of year 1
19 to June 30 of Year 4), thereby “straddling” the first and fourth calendar years. When a member’s
20 FAC Period includes two (or four) calendar years, SBCERA refers to that period as “straddled,”
21 as the FAC Period straddles calendar years. SBCERA members with straddled FAC Periods
22 may cash out more than their Annual Cash-out Limit during that period. For example, if an
23 SBCERA member had accrued 350 hours of leave per year, had an Annual Cash-out Limit of
24 200 hours, and a July 1–June 30 straddled FAC Period, that member could cash out 400 hours of
25 leave during their FAC Period: 200 hours in December of Year 1 and 200 hours in June of Year
26 2. Before implementing the *Alameda* decision, SBCERA’s policy was to include in
27 “compensation earnable” all hours in the member’s FAC, which included leave cash-outs for the
28 straddled FAC Period that exceeded the relevant Annual Cash-out Limit.

D. The *Alameda* decision announces that the PEPPRA amendments to Section 31461 preclude SBCERA from including leave cash-outs in excess of members' Annual Cash-out Limits in "compensation earnable," and SBCERA implements the Supreme Court's ruling.

The California Supreme Court announced its decision in *Alameda* on July 30, 2020. *Alameda* addressed constitutional and common-law challenges to PEPPRA's amendments to Section 31461, and the Court upheld these amendments against each of those challenges. (*Alameda, supra*, 9 Cal.5th at p. 1103.) The Court further addressed the role of county retirement systems and their boards in the broader administrative scheme, holding that "the duty of a county retirement board is to administer [the pension statutes] as enacted by the Legislature." (*Id.* at p. 1069.) Given this duty, retirement systems and their boards "have no authority to act inconsistently" with the retirement statutes, and "have no authority to disregard . . . amendments" to those statutes. (*Id.*) Specifically, the Court held that county retirement boards could not ignore PEPPRA's amendments to CERL no matter their systems' past policies, practices, or agreements with members. (*Id.* at p. 1070.)

In addition to these broader holdings, the *Alameda* Court clarified that the PEPPRA amendments prohibit using straddled FAC Periods to include more leave cash-outs in "compensation earnable" than a member's Annual Cash-out Limit. Specifically, the Court held that PEPPRA's amendments to Section 31461, subdivisions (b)(2) and (4), "prevent th[e] practice" of a retiring employee "designating a final compensation year that straddles two calendar years" so that the employee's "compensation earnable" exceeds the "limited amount of leave time that could be cashed out in a calendar year." (*Id.* at pp. 1062–63.)

In light of the *Alameda* Court's conclusions, the SBCERA Board determined that it *must* exclude from "compensation earnable" all leave cash-outs that exceed what is "earned and payable" for any member during "each 12-month period," of his or her FAC period, "regardless of when [the leave was] reported or paid," notwithstanding its past policies and practices. Accordingly, the Board resolved on August 6, 2020 to implement the PEPPRA amendments to Section 31461, as interpreted by the Supreme Court, by excluding from "compensation earnable" any leave cash-outs in excess of a member's Annual Cash-out Limit as of July 30, 2020, the date

of the *Alameda* decision. (See Cherney Decl., ¶3, Ex. A [resolution].) SEBA appeals the portion of the resolution that excludes excess cash-outs from “compensation earnable.”

II. ARGUMENT

Section 31461, as amended by PEPRA, requires that SBCERA exclude from Legacy members’ “compensation earnable” any unused leave not “earned *and payable*” within “each” twelve-month period of a members’ FAC period, regardless of when that leave was actually “reported or paid.” SBCERA has no authority to ignore this statute, no authority to ignore the Legislature’s amendments, and no authority to ignore the Supreme Court’s construction of the statute. SBCERA thus lawfully applied this exclusion as to all Legacy members who retired on or after the *Alameda* decision’s effective date of July 30, 2020.

A. SBCERA must follow the plain meaning of the retirement statutes, as interpreted by the courts.

SEBA argues that the plain meaning of Section 31461 subdivisions (b)(2) and (b)(4) cannot reasonably be construed as limiting the amount of annual leave cash-out to that which could be “earned and payable” within a calendar year. But SEBA’s interpretation of Section 31461 (b)(2) and (b)(4) entirely dismisses what the Supreme Court unequivocally has held as to those subsections. “[I]t is the judiciary, not individual retirement boards, that has the ‘final responsibility’ for interpreting” the retirement statutes, and retirement systems “have no authority” to act inconsistently with those statutes. (*Alameda*, supra, 9 Cal. 5th at p. 1067.) “Whatever the force of administrative construction . . . final responsibility for the interpretation of the law rests with the courts.” (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 391, quoting *Whitcomb Hotel, Inc. v. California Employment Com.* (1944) 24 Cal.2d 753, 757.) When construing the retirement statutes, courts “first consult the words themselves, giving them their usual and ordinary meaning” and adopt the statute’s “plain meaning” unless it results in “ambiguity, uncertainty, contradiction, or absurdities.” (*Oden v. Board of Administration* (1994) 23 Cal.App.4th 194, 201, quotations omitted.) Thus, absent ambiguities or absurdities, the “plain meaning” of the retirement statutes, *as interpreted by the courts*, defines the scope of retirement allowances. As discussed below, the

plain meaning of Section 31461—as interpreted by the Supreme Court—excludes from Legacy members’ “compensation earnable” any leave cash-outs exceeding a member’s Annual Cash-out Limit regardless of when the payments are “reported or paid.”

B. As interpreted by the Supreme Court, Section 31461 excludes leave cash-outs that exceed Annual Cash-out Limits from “compensation earnable.”

The meaning of subdivisions (b)(2) and (4) of Section 31461, as the *Alameda* Court construed them, is clear. They plainly exclude from Legacy members’ “compensation earnable” any leave cash-outs exceeding a member’s Annual Cash-out Limit regardless of when the payments are “reported or paid”:

“Compensation earnable” does not include, in any case. . .

(2) Payments for unused vacation, annual leave, personal leave, sick leave, or compensatory time off, however denominated, whether paid in a lump sum or otherwise, in an amount that exceeds that which may be earned and payable in each 12-month period [i.e., the period of the Annual Cash-out Limit] during the final average salary period regardless of when reported or paid. . .

* * *

(4) Payments made at the termination of employment, except those payments that do not exceed what is earned and payable in each 12-month period [i.e., the period of the Annual Cash-out Limit] during the final average salary period, regardless of when reported or paid.

(§ 31461, subds. (b)(2) and (4), emphasis added.) The reference to “each 12-month period” in these statutory exclusions reflects the fact that FAC periods for Legacy members are, by default, three years. (§ 31462(a).)⁵ The phrase “regardless of when reported or paid” is all-inclusive; it expands the statute’s application to cover many different circumstances, including but not limited to various designated FAC periods, terms of employment, and Annual Cash-out Limits.

As interpreted by the Supreme Court in the *Alameda* decision, there is no ambiguity in this provision: it requires SBCERA to exclude from “compensation earnable” any leave cash-

⁵ Previously, county boards of supervisors had the authority to provide for a one-year FAC period. (See § 31462.1, subd. (a).) However, following PEPRAs enactment, county retirement systems may *only* use a three-year FAC period except as to those members who previously were afforded a one-year FAC under Section 31462.1. (§§ 7522.32, subd. (b), 31462, subd. (b), and 31462.1, subd. (b))

outs in excess of the Annual Cash-out Limit. In *Alameda*, the Supreme Court unequivocally concluded that subdivisions (b)(2) and (4) of Section 31461 do not permit “compensation earnable” to include more leave cash-outs than employees are permitted to receive in cash during the period covered by their Annual Cash-out Limit, described by the Court as a “calendar year,” *regardless of when those cash-outs actually occur*. Specifically, the Court stated:

Prior to PEPRA’s amendment, *even in counties that limited the amount of leave time that could be cashed out in a calendar year* [i.e., counties with an Annual Cash-out Limit], *employees were able to double the amount of cashed out leave time received during a final compensation year by designating a final compensation year that straddles two calendar years, for example, July 1 through June 30*. By cashing out leave time in the second half of the prior calendar year and the first half of the subsequent calendar year, a retiring employee could double the amount of cashed out leave time received in the final compensation year. *By limiting the inclusion of cashed out leave time to that “earned and payable” in a “12-month period,” subdivision (b)(2) and (4) prevent this practice.*

(9 Cal.5th at pp. 1062–63, emphasis added.) That is, the Court explained that the practice of “straddling” calendar years to “redeem” leave cash-outs would allow a member to increase—potentially doubling—cash-out leave time received “in *the* final compensation year.” (*Id.* at p. 1063, emphasis added.) And the Court held that the Legislature amended subdivisions (b)(2) and (4) of Section 31461 specifically to “prevent this practice” of including in “compensation earnable” leave cash-outs greater than “time that could be cashed out in a calendar year.” (*Id.* at pp. 1062–63.) Section 31461 thus must be interpreted as prohibiting the inclusion in “compensation earnable” of leave cash-outs that exceed Annual Cash-out Limits if the *Alameda* Court’s decision is to have any force.

C. The Supreme Court’s interpretation of Section 31461 in *Alameda* was not dicta.

SEBA discounts the Supreme Court’s unanimous and explicit exclusion of excess cash-outs from “compensation earnable,” arguing that the Court’s statements are dicta. “Dicta consists of observations and statements unnecessary to the appellate court’s resolution of the case.” (*Sonic-Calabasas A, Inc. v. Moreno* (2013) 57 Cal.4th 1109, 1111.) “Statements responsive to the issues raised on appeal and intended to guide the [lower] court on remand are not dicta.” (*Leider v. Lewis* (2017) 2 Cal.5th 1121, 1134.)

The *Alameda* Court’s discussion of straddling and the PEPRAs amendments is not dicta. The constitutionality and application of Section 31461 subdivisions (b)(2) and (b)(4) was expressly at issue in *Alameda*, and the Court discussed the California Attorney General’s briefing on the topic. The Supreme Court further expressly cautioned the lower courts, on remand, not to run afoul of the statute “preventing the practice” of including leave cash-outs in “compensation earnable” greater than “time that could be cashed out in a calendar year.” (*Alameda*, at pp. 1062–63.; see *Leider v. Lewis* (2017) 2 Cal.5th 1121, 1134 [statements were not dicta where Supreme Court discussed statute at issue and cautioned lower courts not to “run afoul” of its function].)

The *Alameda* Court determined that the PEPRAs amendments to Section 31461 were constitutional on their face and as applied. To arrive at that conclusion, the Court first had to analyze the *purpose* of those amendments, and it determined in the course of that analysis that they prohibit CERL systems from including in “compensation earnable” any leave cash-outs that exceed Legacy members’ Annual Cash-out Limits. The Supreme Court makes this clear both in the “Background” section *explaining the clear function of PEPRAs amendments (b)(2) and (b)(4)*, and again in the “Discussion” section describing the same:

Section 31461, subdivision (b)(2), for example, ***limits the inclusion of payments for unused leave time in “compensation earnable” to the amount “earned and payable ... during the final average salary period, regardless of when reported or paid.”*** Restricting the inclusion of such payments to those earned in the final compensation period promotes the underlying theory established by the general language of section 31461.

* * *

Limiting the inclusion of such payments in the “compensation earnable” calculation to the amount “earned and payable” during the final compensation period, as required by section 31461, subdivision (b)(2), reduces the potential for distortion from this type of compensation. (See *Alameda Sheriffs*, supra, 19 Cal.App.5th at pp. 97–98 [“the touchstone for calculating “compensation earnable” is still the compensation that was actually earned by the retiring employee in ‘the period under consideration’ ”].)

(*Alameda*, at pp. 1096-1097.) This analysis of the statute at issue is not dicta; it is an unequivocal account of the statute being analyzed. In any event, “Supreme Court dicta generally

should be followed, particularly where the comments reflect the court's considered reasoning.” (*Hubbard v. Superior Court* (1997) 66 Cal.App.4th 1163, 1169 [“When the Supreme Court has conducted a thorough analysis of the issues and such analysis reflects compelling logic, its dictum should be followed.”].) Even if it were dicta, the Supreme Court’s thorough analysis—that evidently reflects the Court’s considered reasoning—should be followed.

D. *Alameda* confirms that the Legislature intended to restrict annual leave cash-outs included in “compensation earnable” to a calendar year.

SEBA finally argues that the “actual holding” of *Alameda* indicates no legislative intent to restrict annual leave cash-outs included in “compensation earnable” to a calendar year. This is wrong. *Alameda* explicitly confirms the Legislature’s intent as to Section 31461 subdivisions (b)(2) and (b)(4), and the Legislature itself confirms as much via the Assembly Bill analysis concerning the purpose of the PEPRA amendments. As *Alameda* explains,

By limiting the amount of “cash out” and termination pay that can be included in compensation earnable to the value of leave time “earned and payable in each 12-month period during the final average salary period” (*ibid.*), the Legislature appears to have intended to prevent retiring employees from, in effect, including remuneration earned during prior years in the final compensation calculation.

(*Alameda, supra*, 9 Cal.5th at p. 1062; *Id.* at p. 1098 [“Further, as the Legislature explained in passing the amendments, the amendment was designed to limit pension spiking, the manipulation of compensation to artificially increase a pension benefit.”]; *Id.* at p. 1095 [“the Legislature's primary purpose in enacting the PEPRA amendment was to modify CERL's “very broad and general definition of ‘compensation earnable’” to prevent pension spiking . . . by introducing new exclusions and limitations” to “compensation earnable”.]

Alameda also described the Assembly Bill analysis that made clear the Legislature’s intent to curb pension-spiking practices such as straddling:

“A bill analysis prepared in connection with the pre-PEPRA version of Assembly Bill 340 explained that the purpose of these changes was to circumscribe CERL's “very broad and general definition of ‘compensation earnable’” in order to reduce pension ““spik[ing],”” the manipulation of an employee's pattern of work and pay to produce inflated “compensation earnable” during the final compensation period.

(*Id.* at p. 1061; Assem. Com. on Public Employees, Retirement and Social Security, Analysis of Assem. Bill No. 340 (2011–2012 Reg. Sess.) as amended Apr. 25, 2011, p. 2.)

Thus, the Supreme Court in *Alameda* and the Legislature make clear that the Legislature enacted PEPPRA to reduce pension spiking practices such as including in retirement allowance calculations excess cash-outs of straddled leave, and amended subdivisions (b)(2) and (4) of Section 31461 specifically to “prevent this practice” of including in “compensation earnable” leave cash-outs greater than “time that could be cashed out in a calendar year.” (*Id.* at pp. 1062–63.)

III. CONCLUSION

SBCERA has no authority to ignore statutes enacted by the Legislature as the Supreme Court has interpreted them. SBCERA thus must, for all Legacy members who retired on or after July 30, 2020, exclude leave cash-outs in excess of Annual Cash-out Limits from “compensation earnable.” For the foregoing reasons, the Board should affirm SBCERA’s limitation of excess cash-outs from “compensation earnable” and deny SEBA’s appeal.

Dated: May 4, 2022

NOSSAMAN LLP

By: _____

Ashley K. Dunning
Attorneys for Respondent SAN BERNARDINO
COUNTY EMPLOYEES’ RETIREMENT
ASSOCIATION

DECLARATION OF SERVICE

I am more than 18 years old and not a party to this action. My business address is Nossaman LLP, 50 California Street, Suite 3400, San Francisco, California 94111. On May 5, 2022, I caused to be served the following document(s):

RESPONDENT SAN BERNARDINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION'S RESPONSIVE BRIEF IN OPPOSITION TO APPELLANTS' OPENING BRIEF RE: PENSIONABILITY OF ANNUAL LEAVE CASH-OUTS

DECLARATION OF DEBBY CHERNEY


on the interested parties in this action by transmitting a true pdf copy of the foregoing document(s) by e-mail transmission from alevintow@nossaman.com to the interested parties only as indicated on the below service list at the e-mail addresses set forth on said service list. Said transmission(s) were completed on the aforesaid date at the time stated on declarant's e-mail transmission record. Each such transmission was reported as complete and without error.

San Bernardino County Employees' Retirement Association
348 W. Hospitality Lane, Suite 100
San Bernardino, CA 92408
Email: BORLegalServices@SBCERA.org

Jacob A. Kalinski, Esq.
Brian Ross, Esq.
RAINS LUCIA STERN ST. PHALLE & SILVER, PC
1428 2nd St Ste 200
Santa Monica, CA 90401-2367
Tel: (310) 393-1486
Fax: (310) 395-5801
Email: jkalinski@rlslawyers.com
bross@rlslawyers.com

Attorneys for Appellant San Bernardino County Sheriff's Employees' Benefit Association

I declare under penalty of perjury that the above is true and correct. Executed on May 5, 2022 at San Francisco, California.


Anthony Levintow