

1 Jason H Jasmine, Bar No. 215757  
jason@majlabor.com  
2 **MESSING ADAM & JASMINE LLP**  
980 9<sup>th</sup> Street, Suite 380  
3 Sacramento, California 95814  
Telephone: 916.446.5297  
4 Facsimile: 916.448.5047

5 Attorneys for PETITIONER Margaret Brown

6

7

8

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9

**COUNTY OF SACRAMENTO**

10

11 MARGARET BROWN,

Case No.

12 Petitioner,

**PETITION FOR WRIT OF MANDATE**

13 v.

14 HENRY JONES, in his capacity as the  
President of CALIFORNIA PUBLIC  
15 EMPLOYEES' RETIREMENT SYSTEM,  
CALIFORNIA PUBLIC EMPLOYEES'  
16 RETIREMENT SYSTEM, and CALIFORNIA  
PUBLIC EMPLOYEES' RETIREMENT  
17 SYSTEM BOARD OF ADMINISTRATION,

18 Respondents.

19

20 Petitioner MARGARET BROWN petitions this Court to either 1) issue an order  
21 compelling HENRY JONES, in his capacity as the President of the CalPERS Board of  
22 Administration, the CalPERS Board of Administration, and/or CalPERS, to comply with his/their  
23 legal obligations discussed herein, or 2) issue an order to show cause why such an order should  
24 not be issued, and issue a peremptory writ of mandate upon return of the alternative writ. The  
25 relief sought by Petitioner is authorized by California Code of Civil Procedure section 1085.

26 ///

27 ///

28 ///

1 **I.**

2 **INTRODUCTION**

3 CalPERS is governed by a 13-member Board of Administration. Of those, only 6 are  
4 elected, while 3 are appointed and 4 hold their seats as ex officio members. Of the 6 who are  
5 elected, only 2 are elected by and from “all active members” of CalPERS. Currently, Margaret  
6 Brown holds one of those seats. In her role as the one elected representative for all active  
7 members, her duties include meeting with members, retirees, and other stakeholders, as well as to  
8 (as a member of the Board) setting state and school employer contribution rates, determining  
9 investment asset allocations, and adopting actuarial valuations. Brown has been targeted for  
10 unequal treatment and scrutiny due to her willingness to represent the interests of CalPERS  
11 members – sometimes in opposition to other CalPERS Board members and staff. This Petition is  
12 based on discipline arbitrarily and capriciously imposed on Brown by the Board President, Henry  
13 Jones, without the opportunity to have the merits of the discipline heard by a neutral party – or  
14 even by the CalPERS Board as a whole. The discipline imposed included restrictions on Brown’s  
15 ability to communicate with those members she was elected to represent. Subsequent to the  
16 discipline that is the subject of this Petition, the CalPERS Board has proposed a new Board Travel  
17 policy that would allow the President of the Board to exercise even more unilateral authority and  
18 punish those who disagree with him. This Petition seeks to require at least some degree of neutral  
19 review before an elected official is unilaterally deprived of her right and ability to represent those  
20 she was in fact elected to represent.

21 1. This petition is brought by Petitioner MARGARET BROWN (“Petitioner” or  
22 “Brown”), against Respondents HENRY JONES (“Respondent” or “Jones”), in his capacity as the  
23 President of the CalPERS Board of Administration, the CalPERS Board of Administration, and  
24 against CalPERS, alleging an improper unilateral disciplinary action imposed by JONES without  
25 the process for an administrative appeal or challenge of any sort.

26 2. The “private discipline” imposed by Jones against Brown was imposed unilaterally,  
27 arbitrarily, capriciously, and in retaliation for protected activity. Similar conduct by other Board  
28 members, to that for which Brown was disciplined, was not met with commensurate discipline.

1 Brown was disciplined in part for alleged misconduct that occurred several years ago, before she  
2 was even elected to the CalPERS Board. Brown was disciplined without any avenue for an  
3 administrative appeal.

4 3. The “private discipline” imposed on Brown interfered with her stated duties as a  
5 CalPERS Board member, and also interferes in her upcoming bid for re-election by (in part)  
6 disallowing her from performing some of the duties she was elected to perform.

7 4. Brown seeks an alternative writ either 1) ordering Respondents to rescind the  
8 punitive actions against her, or 2) ordering Respondents to provide Brown with an opportunity for  
9 an appeal to a neutral third party.

## 10 II.

### 11 JURISDICTION AND VENUE

12 5. This Court has jurisdiction over Petitioners’ assertions of a ministerial duty on the  
13 part of Respondents to provide an administrative appeal process to contest discipline against her,  
14 pursuant to Code of Civil Procedure § 1085.

15 6. Venue in the County of Sacramento is proper as it is an action against CalPERS,  
16 the CalPERS Board of Administration, and Henry Jones in his official capacity as the President of  
17 the CalPERS Board of Administration. CalPERS is headquartered and has its primary office in  
18 Sacramento, California.

## 19 III.

### 20 PARTIES

21 7. Petitioner BROWN is a duly elected member of the CalPERS Board of  
22 Administration, having first been elected in 2017 and began serving her term on January 16, 2018.

23 8. BROWN is “beneficially interested” in the issuance of this writ under the definition  
24 of Code of Civil Procedure section 1086 because she was the individual disciplined as set forth  
25 herein without any due process, and in such a way as to prevent her from exercising her duties as  
26 an elected member of the CalPERS Board of Administration.

27 9. Respondent Henry JONES began serving on the CalPERS Board of Administration  
28 in 2008, and has served as the Board President since January of 2019.



1           13.     Also on December 20, 2019, Ashley K. Dunning of Nossaman LLP – fiduciary  
2 counsel to the CalPERS Board – wrote to the Board and informed it that Board President Henry  
3 Jones had disciplined a Board member (though that Board member was not identified in the letter,  
4 it was BROWN). That letter, which is NOT attached as an exhibit as it is purportedly privileged  
5 (though BROWN received a copy as a member of the Board) advised the Board that a member  
6 had been disciplined, and what that discipline was.

7           14.     The discipline against BROWN prevented her from meeting with those she was  
8 elected to represent, prevented her from attending/participating in training and continuing  
9 education, removed her from the Investment Committee (which is the committee responsible for  
10 making decisions regarding the investment of the many billions of dollars CalPERS manages for  
11 its members), and otherwise impeded her ability to perform her duties.

12           15.     The allegations against BROWN not only included false and misleading  
13 allegations, but were also based in part on alleged misconduct that occurred before she was even  
14 elected to the CalPERS Board. Furthermore, there are documented examples of at least one  
15 former member of the CalPERS Board who both during his term and since the end of his term,  
16 continues to use the CalPERS name (the thing for which BROWN is purportedly being  
17 disciplined) in his Twitter handle. This has been happening since May of 2017. A true and  
18 correct copy of a June 7, 2020 screenshot of Richard Costigan’s Twitter homepage is attached as  
19 Exhibit B.

20           16.     However, the issue in this Petition is not what Brown was alleged to have done,  
21 why it was inaccurate, or that the discipline was inappropriate, arbitrary, capricious, and intended  
22 to silence one of the only watchdogs on the CalPERS Board. Rather, the issue in this Petition is  
23 that *according to Respondents*, no one may challenge such discipline – even when it takes money  
24 out of their own pockets, prevents them from performing their duties as elected members of a  
25 public body, undermines the interests of the members of CalPERS, or is used to unduly influence  
26 elections and other activities.

27           17.     In a May 14, 2020 letter, the CalPERS Board (through its fiduciary counsel)  
28 confirmed in writing that it does in fact take the position that the President of the CalPERS Board

1 may unilaterally impose discipline, of the sort described above and set forth in Exhibit A, and  
2 need not provide any opportunity to challenge the veracity of the allegations or the appropriateness  
3 of the discipline. Thus, according to the conclusions in this letter, the CalPERS Board President  
4 can (and did) unilaterally impose discipline on another member of the Board – including discipline  
5 that limits both her ability to perform her duties, her ability to represent the interests of the  
6 members of CalPERS, *and* undermines her ability to be re-elected – for any reason or no reason  
7 whatsoever. Respondents have – through their counsel – refused any and all attempts to have a  
8 neutral third party consider the allegations made by JONES, the defenses to those allegations by  
9 Brown, and/or the appropriateness of the discipline imposed. A true and correct copy of this May  
10 14, 2020 correspondence from CalPERS’ fiduciary counsel is attached as Exhibit C.

11 **FIRST CAUSE OF ACTION**

12 **(Failure to Provide Administrative Appeal – Against All Respondents)**

13 18. Petitioner hereby incorporates paragraphs 1 through 17 above as though fully set  
14 forth herein.

15 19. JONES in his capacity as President of the CalPERS Board unilaterally took an  
16 action impacting the rights, and property, of BROWN, without due process. JONES then  
17 unilaterally determined that his action was not subject to appeal nor even to review by a neutral  
18 third party – or anyone whatsoever.

19 20. Petitioner has no plain, speedy, and adequate remedies in the ordinary court of law,  
20 and requests for an administrative appeal were denied by Respondents.

21 **V.**

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Petitioner prays for judgment against Respondents, and each of them, as  
24 follows:

25 1. That the court issue a peremptory writ of mandate ordering Respondents to rescind  
26 the discipline of Petitioner BROWN;

27 2. That the court issue an peremptory writ of mandate ordering Respondents to  
28 provide Petitioner BROWN an administrative appeal hearing with a neutral third party decision

1 maker;

2 3. That the court issue a peremptory writ of mandate enjoining Respondents from  
3 disciplining members of the CalPERS Board of Administration in the future without first  
4 providing an administrative appeal hearing with a neutral decision maker;

5 4. For fees and costs of suit incurred in this action by Petitioner BROWN;

6 5. For such other and further relief as the Court deems proper.

7 Dated: June 16, 2020

MESSING ADAM & JASMINE LLP

8

9

By 

Jason H Jasmine

Attorneys for PETITIONER Margaret Brown

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

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

**VERIFICATION**

**STATE OF CALIFORNIA, COUNTY OF SACRAMENTO**


I am the Petitioner in this action and I have personal knowledge of the matters stated in the foregoing VERIFIED PETITION FOR WRIT OF ORDINARY MANDATE (CODE CIV. PROC. § 1085), and if called upon to do so, could and would testify competently to the matters set forth therein.

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 16, 2020, at Apple Valley, California.

Margaret Brown



Print Name of Signatory    Signature



**EXHIBIT A**

## Lacy A. Monserrat

---

**From:** Margaret Brown <calpersmargaret@gmail.com>  
**Sent:** Sunday, June 07, 2020 4:08 PM  
**To:** Jason H. Jasmine  
**Subject:** Fwd: FW: Private Discipline

**[EXTERNAL]**

Margaret Brown  
Member, CalPERS Board of Administration (2018-2022)

----- Forwarded message -----

**From:** Brown, Margaret <[Margaret.Brown@calpers.ca.gov](mailto:Margaret.Brown@calpers.ca.gov)>  
**Date:** Wed, Feb 12, 2020 at 1:05 PM  
**Subject:** FW: Private Discipline  
**To:** [calpersmargaret@gmail.com](mailto:calpersmargaret@gmail.com) <[calpersmargaret@gmail.com](mailto:calpersmargaret@gmail.com)>

Margaret Brown

**CalPERS** Board of Administration, Elected Member

---

**From:** Jones, Henry <[Henry.Jones@calpers.ca.gov](mailto:Henry.Jones@calpers.ca.gov)>  
**Sent:** Friday, December 20, 2019 9:24 AM  
**To:** Brown, Margaret <[Margaret.Brown@calpers.ca.gov](mailto:Margaret.Brown@calpers.ca.gov)>  
**Cc:** Jones, Henry <[Henry.Jones@calpers.ca.gov](mailto:Henry.Jones@calpers.ca.gov)>  
**Subject:** Private Discipline

Dear Trustee Brown:

In my capacity as the President of the CalPERS Board of Administration, I have received a copy of the enclosed several letters written to you by CalPERS executives from 2017 through the present. In those letters, CalPERS repeatedly asked you to cease and desist in your improper use of CalPERS's name, first as a website address and then as the handle associated with your Twitter account.

Your conduct on this topic is not, in my judgment, consistent with a CalPERS Board member's responsibilities, as required by the Board's Governance Policy. In particular, it is not consistent with the Board's "Statement of Activities that are Inconsistent, Incompatible, or in Conflict with the Duties of a Board Member of the Public Employees' Retirement System" ("Inconsistent Activities Statement"), because you continued to improperly use CalPERS's name "knowing that the act may later be subject, directly or indirectly to the control, inspection, review, audit, or enforcement by the PERS Board." (Inconsistent Activities Statement, I(6).) Therefore, in light of the nature and number of your violations of CalPERS's rules regarding use of its name, I have decided to implement private discipline against you as provided in Section VIII(B)(2)(a) of the Governance Policy.

The private discipline I am imposing on you is as follows:

1) I hereby admonish you not to engage in any improper use of CalPERS's name as described in the enclosed letters or in any other manner. If you resume your improper use of CalPERS's name, I will consider bringing the topic to the full Board for discussion and potential action in open session under Governance Policy section V(B).

2) I also hereby censure you for engaging in conduct that fails to meet the standards of ethical conduct anticipated by the Governance Policy.

3) Your travel privileges on behalf of, and to be reimbursed by, CalPERS, are hereby suspended until June 30, 2020, with the exception of travel that the CalPERS Board already has approved and also with the exception of travel to CalPERS's scheduled Board of Administration and Committee meetings.

4) You are to participate in additional training provided by CalPERS, which will be the comprehensive Board member orientation that will be provided also to any new members who join the CalPERS Board as of January 2020. CalPERS will provide you with the timing of the training separately.

5) I will take your conduct into account in 2020 when I am considering committee appointments.

Please let me know if you have any questions.

Sincerely,

Henry Jones  
CalPERS Board President

---

This email has been scanned for spam and viruses by Proofpoint Essentials. Click [here](#) to report this email as spam.

**EXHIBIT B**



Follow

## Former California SPB & CalPERS Boardmember

@CostiganCalPERS

@CaliforniaSPB (07-18) @CalPERS (10-18) I was honored to help those that #ServeCalifornia from start to finish | Appointed by @schwarzenegger and @JerryBrownGov

📍 Sacramento, CA 🔗 richardcostigan.com 📅 Joined May 2017

731 Following 184 Followers

Not followed by anyone you're following

Tweets

Tweets & replies

Media

Likes

📌 Pinned Tweet



Former California SPB & CalPERS Boardmember @Costig... · 1/9/19 ▾

I am still working on my options.

🏠 CalPERS @CalPERS · 1/8/19

What are your options if you plan on working after retirement? Learn more about reinstatement, becoming a retired annuitant or joining the private industry in this video: youtube.com/watch?v=VhWXmo... #Retirement #CalPERSTip



Former California SPB & CalPERS Boardmember @Costi... · 4/24/20 ▾

.@stumptowncoffee @TillamookDairy #icecream on a #FridayNight - this #StayHome 🏠 order has me breaking all sorts of rules.



Search Twitter



## What's happening

US news · LIVE

US protests: Rallies across the nation continue as Sunday marks nearly two weeks since George Floyd's death



COVID-19 · LIVE

COVID-19: Updates for the US



Celebrities · Trending

James Franco

1,134 Tweets

Celebrities · Trending

jimmy kimmel

5,709 Tweets

Entertainment · Trending

Mark Wahlberg

52.7K Tweets

Show more

EXHIBIT C



ATTORNEYS AT LAW

50 California Street  
34th Floor  
San Francisco, CA 94111  
T 415.398.3600  
F 415.398.2438

Ashley K. Dunning  
D 415.438.7228  
adunning@nossaman.com

Refer To File #: 030702-0015

May 14, 2020

**BY EMAIL ONLY**  
**(jason@majlabor.com)**

Jason H. Jasmine, Esq.  
Messing Adam & Jasmine LLP  
980 9th Street, Suite 380  
Sacramento, CA 95814-2723

Re: Private Discipline of CalPERS Trustee Brown by CalPERS President Jones

Dear Mr. Jasmine:

I am writing in my capacity as outside fiduciary counsel to the Board of Administration (“Board”) of the California Public Employees’ Retirement System (“CalPERS”), at the direction of CalPERS Board President Henry Jones. This letter responds to the two conversations we had this week, as well as your follow up email of yesterday, regarding the above-referenced topic.

The private discipline that you reference was set forth in President Jones’ email to Trustee Brown of December 20, 2019, and it resulted from Trustee Brown’s violations of the Board’s Governance Policy as outlined in both that email, and in the several letters written to Trustee Brown by CalPERS executives relating to her improper use of CalPERS’ name in violation of the laws and policies describes therein. To summarize, President Jones’ private discipline of Trustee Brown included the following five actions: (1) an admonition, which he provided; (2) a censure, which he also provided; (3) a suspension of travel privileges on behalf of, and to be reimbursed by, CalPERS, until June 30, 2020, with the exception of travel (i) that the Board already had approved and (ii) to CalPERS’ scheduled Board and Committee meetings; (4) a requirement of additional training in January 2020, which already occurred with fiduciary training that the entire Board received; and (5) a statement that President Jones would take Trustee Brown’s conduct into account when considering committee appointments in 2020, which also already has occurred.

You noted in your email that you are “certain that CalPERS would not officially take the position that the President may simply unilaterally impose discipline on other Board members, which includes withholding their appointment to committees, denying expense reimbursements, and formally censuring/admonishing without the right to at least contest the accuracy of the allegations.” That statement is incorrect. Rather, the Board’s adopted Governance Policy provides precisely that delegated authority to the Board President. Specifically, Section VIII(B)(2)(a) authorizes the President to impose private discipline as follows: “At his or her discretion, after considering the nature and number of the violations, the Board President may implement private discipline against a Board member whose conduct is otherwise



Jason H. Jasmine, Esq.  
May 14, 2020  
Page 2

inconsistent with Board policies. Such discipline may include, but will not be limited to, admonishment, censure, temporary termination of a Board member's travel privileges, or the requirement of additional training." (<https://www.calpers.ca.gov/docs/board-governance-policy.pdf>) In addition, Section VII(C) states that "The members of each committee of the Board will be appointed annually by the Board President, with consideration given to the expressed desires of individual Board members and the value of periodic rotation of committee members so as to provide direct exposure to differing board responsibilities." Thus, President Jones had express authority delegated by the Board to impose exactly the private discipline that he selected for Trustee Brown, and related actions he took, in this context.

Furthermore, contrary to the implication of your comment, President Jones was in fact open to hearing Trustee Brown's concerns, and he did so during a February 2020 telephone conversation with Ms. Brown. However, that discussion did not change his mind regarding the propriety of the private discipline he already had imposed.

President Jones also has considered the requests that Trustee Brown is now making through your office regarding the private discipline, which include, among others, to reimburse her for travel she incurred in February and March 2020 for stakeholder meetings that occurred in Sacramento and Oakland, and to authorize her to be reimbursed for additional stakeholder meetings and educational conferences that she plans to attend if Shelter in Place orders so allow in May and June 2020. President Jones notes that Trustee Brown was aware when she attended the meetings in February and March that CalPERS would not reimburse her for them, but she chose to attend them in person anyway.

Furthermore, it is highly speculative that any stakeholder or educational conferences will be conducted in person in May or June 2020 given the current Shelter in Place Orders. Indeed, the CalPERS CBEE event that she noted she would like to attend has been cancelled given the COVID-19 pandemic. Communication with stakeholders and educational opportunities are now regularly provided virtually, and they thus require no travel, even if President Jones were to consider granting Trustee Brown's request based on the merits of a particular educational travel opportunity that would serve CalPERS and its members.

President Jones also has considered Trustee Brown's request that he change some other aspects of his private discipline, and he will not do so. He notes, however, that he will be open to considering Trustee Brown's interest in being re-appointed to the Investment Committee in January 2021, if he remains President of the Board at that time.

Sincerely,

A handwritten signature in black ink, appearing to read "Ashley K. Dunning". The signature is written in a cursive, flowing style.

Ashley K. Dunning

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

**PROOF OF SERVICE**

**Brown v. Jones, et al.**

**STATE OF CALIFORNIA, COUNTY OF SACRAMENTO**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Sacramento, State of California. My business address is 980 9th Street, Suite 380, Sacramento, CA 95814.

On June 16, 2020, I served true copies of the following document(s) described as **PETITION FOR WRIT OF MANDATE** on the interested parties in this action as follows:

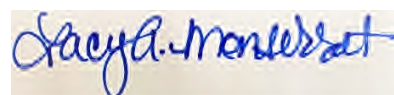
**SERVICE LIST**

Matthew R. Jacobs, Chief Counsel  
CalPERS – Legal Office  
Email: matthew.jacobs@calpers.ca.gov

**BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from e-mail address lacy@majlabor.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 16, 2020, at Sacramento, California.



\_\_\_\_\_  
Lacy Monserrat, CCLS