

March 17, 2021

VIA EMAIL

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Abenicio Cisneros
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Re: *Joseph John Jelincic, Jr. v. California Public Employees' Retirement System Board of Administration*, Case No. RG21090970

Dear Mr. Risher and Mr. Cisneros,

CalPERS has retained me and this firm in the above-referenced matter.

As you should be aware, your Petition for Writ of Mandate and Complaint for Equitable Relief (the "Complaint"), along with Exhibit B thereto, contains confidential information that should not have been publicly disclosed. We request that you immediately withdraw the Complaint.

Although the Complaint claims an entitlement to see what happened at the CalPERS Board of Administration's August 17, 2020 closed session meeting, it acknowledges that at least *some* of the content of that meeting should not be shared publicly absent a court order (*see* Compl. ¶ 47). We presume that is why you redacted Exhibit B, the list of purported "topics discussed" at that meeting, when you filed it. You did not, however, redact the portions of the Complaint discussing what Mr. Jelincic believes happened during closed session. For example, paragraph 33 describes in detail what Mr. Jelincic believes occurred. Regardless of whether Mr. Jelincic and/or you think those topics are appropriate for a closed session meeting, and contrary to your unsupported assertion in paragraph 47 of the Complaint, unless the Court determines that those topics, if discussed, should have been discussed in open session, paragraphs 33-46 of the Complaint should have been redacted, just as you attempted to

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redact Exhibit B. To mitigate the potential harm from publishing this improper material, you must withdraw the Complaint immediately.

Additionally, certain third parties, such as the Naked Capitalism blog, received copies of Exhibit B with the redactions improperly applied, making it easy to see what is behind the redactions. In the version of the Complaint that is publicly downloadable from the Court's website, Exhibit B appears to be properly redacted. The third parties, therefore, presumably received the Complaint and Exhibit B from you or your client. We therefore expect you to take immediate action to cause all such third parties to destroy any copies they have, and to remove them from public view. (Relatedly, because we do not know exactly what you filed with the Court or how you filed it, if you provided the Court with a version of Exhibit B that was not properly redacted, we expect you to take immediate steps to withdraw from the Court files any improperly redacted version of Exhibit B, in addition to the Complaint itself, as requested above.)

This is a very serious matter. Mr. Jelincic's verified Complaint itself describes Exhibit B as "[a] Board member's record of the meeting." (Compl. ¶ 39.) Government Code section 11126.1 explicitly provides that a record of the topics discussed and decisions made in closed session is to be kept confidential and accordingly is exempt from disclosure under the Public Records Act. As noted by the Attorney General in the context of the Brown Act, statutes like section 11126.1 "would be rendered meaningless if an individual member could publicly disclose the information he or she received in confidence." (76 Cal.Ops.Atty.Gen. 289 (1993).) Furthermore, as your client well knows given his former position as a CalPERS Board member and his close attention to CalPERS matters since, Board members may not reveal CalPERS's confidential information to third parties. Such disclosures violate Board members' fiduciary duty (*see* CA Const. art. XVI, § 17(c); *see also* CalPERS Board Governance Policy Art. IV.A.); the CalPERS Board Governance Policy, as the Complaint itself alleges (Compl. ¶ 91); the Statement of Activities That Are Inconsistent, Incompatible, Or In Conflict With The Duties Of A Board Member Of The Public Employees' Retirement System; and the contract that all Board members sign agreeing to abide by CalPERS's policies. Any Board member who revealed the content of closed session meetings to Mr. Jelincic (who is no longer a Board member himself) breached the legal duty to protect the confidentiality of information received in closed session, all of these policies and rules, her contract, and her fiduciary duties.

Mr. Jelincic himself similarly faces liability for, at a minimum, aiding and abetting the Board member's breach of fiduciary duty (*see Am. Master Lease LLC v. Idanta Partners, LTD.*, 225 Cal. App. 4th 1451 (2014) (a party can be liable for aiding and abetting a breach of fiduciary duty, even if he himself owes no such duty, if he makes a "conscious decision to participate in tortious activity for the purpose of assisting another in performing a wrongful act")), and interfering with CalPERS's contract with the Board member (*see Caliber Paving Co., Inc. v. Rexford Indus. Realty & Mgmt., Inc.*, 54 Cal. App. 5th 175, 180 n. 1 (2020)), as well. Our request to you and Mr. Jelincic to remove all copies of the Complaint and Exhibit B from publicly accessible locations—pending the Court's resolution of this dispute—is intended to mitigate the potential harm from Mr. Jelincic's and the Board member's actions.

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CalPERS will investigate and take appropriate action with respect to Mr. Jelincic and his source's improper actions. In the meantime, both you and Mr. Jelincic must retain all documents, including but not limited to any communications and records of communications, with the Board member from whom he obtained the "record" of the closed session, in addition to all other documents related to this matter. All such documents must be retained both in their original form and in any subsequent or replicated form. Please likewise instruct, and/or instruct Mr. Jelincic to instruct, that Board member to retain all such documents.

CalPERS reserves all its rights to seek any other, further relief against Mr. Jelincic and anyone found to be acting in concert with him.

Sincerely,

A handwritten signature in black ink, appearing to read "Ragesh K. Tangri". The signature is stylized with a large, sweeping initial letter and a long horizontal line extending to the right.

Ragesh K. Tangri