

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO  
CENTRAL**

**MINUTE ORDER**

DATE: 05/26/2015

TIME: 01:33:00 PM

DEPT: C-68

JUDICIAL OFFICER PRESIDING: Judith F. Hayes

CLERK: Richard Cersosimo

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT:

CASE NO: **37-2014-00030113-CU-MC-CTL** CASE INIT.DATE: 09/05/2014

CASE TITLE: **San Diego County Employees Retirement Association vs. County Of San Diego**

**[Imaged]**

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Misc Complaints - Other

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**APPEARANCES**

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The Court, having taken the above-entitled matter under submission on 05/15/2015 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

The Motion of Defendant County of San Diego for Judgment on the Pleadings is GRANTED, without leave to amend. (*Westly v. California Public Employees' Retirement System* (2003) 105 Cal.App.4th 1095, Government Code sections 25300, 31522.1-31522.3)

The Court finds, as a matter of law, plaintiff is not able to state sufficient facts to constitute the claims asserted in its complaint. The California Constitution, applicable statutes and authorities do not support plaintiff's position that it has the authority to set the compensation of the County employees who work at the Retirement Association.

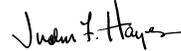
Under applicable law, the County Board of Supervisors is tasked with the determination of compensation for all county officers including the number, compensation, tenure, appointment and conditions of employment for all county employees. (Government Code section 25300, See also, Government Code sections 31522.1-31522.3) The employees of SDCERA are county employees and are subject to the county civil service system rules, including the salary ordinances adopted by the County Board of Supervisors which determines compensation of county officers and employees. (Government Code section 31522.1, 31522.3)

Under the California Constitution, the retirement board's authority "is limited to actuarial services and to the protection and delivery of the assets, benefits, and services for which the Board has a fiduciary responsibility." (*Westly, supra*, at 1112-13) The retirement board's fiduciary obligation "goes to the management of the assets and their delivery to members and beneficiaries of the system, not the remuneration of those who administer it." (*Id.*) Therefore, SDCERA is tasked with the investment and financial protection of assets for the benefits of its members. It may be able to hire and manage its employees, but it must do so under the laws of the state which require those employees be compensated as county employees with salaries determined by the Court Board of Supervisors.

SDCERA's action is analogous to the *Westly* action. As stated in *Westly*, *Corcoran* is inapplicable. (*Westly, supra* at 1112). The concepts expressed in *Corcoran* concerning a retirement board's authority to administer its own personnel expenses are not controlling since the issue addressed in that case was whether the retirement board was the "governing body" for purposes of Government Code section 31751. In fact, the *Corcoran* court never addressed the issue of remunerations for the retirement board's employees.

For the first time at oral argument, plaintiff requested leave to amend the complaint to specifically address the relevance of sections 35122.2 and 35122.3 as to the chief investment officer, the chief financial officer, and the chief executive officer. Although the Court believes any amendment in this regard will not cure the defects raised in the motion for judgment on the pleadings, the Court nonetheless grants plaintiff ten days leave to amend only as to this issue.

The Court also continues the CMC in this matter to June 19, 2015 at 10:00 a.m.



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Judge Judith F. Hayes