



# California Court of Appeal Rejects Time-Barred Challenge to Sonoma County's 2002 Grant of Enhanced Retirement Benefits

12.16.2019 | By [Ashley K. Dunning](#), [Peter H. Mixon](#), [Jennifer L. Meeker](#)

On December 12, 2019, the California Court of Appeal for the First Appellate District handed down a unanimous decision in *Luke v. County of Sonoma, Sonoma County Employees' Retirement Association, et al.*, affirming the superior court's determination that plaintiff's challenge to the payment of increased public employee pension benefits the County of Sonoma ("County") granted in or about 2002 was barred by the statute of limitations. (Case No. A155286, certified for partial publication.) The decision in *Luke* affirms the accrual of actions challenging once-in-time official acts of public agencies as they apply to public retirement benefits.

Plaintiff, a Sonoma County resident and taxpayer, alleged that in or about 2002 or 2003, the County failed to comply with state laws requiring local legislative bodies to obtain an actuarial statement of future annual costs of proposed pension increases, and to make such anticipated future annual costs public at a public meeting, before authorizing the pension increases. (Citing Gov. Code §§7507, 23026, 31515.5, 31516.)

The Court of Appeal upheld the superior court's decision and rejected Plaintiff's claim as barred by the three year statute of limitations in Code of Civil Procedure section 338, subd. (a). In rejecting Plaintiff's defenses to the statute of limitations bar, the Court held that the "continuous accrual" doctrine did not apply because the public notice involved did not result in a "continuing obligation" on the part of the County to "procure and make public an actuarial statement before authorizing pension increases." Rather, that public notice was a one-time obligation of the granting plan sponsor. The Court contrasted that conclusion with *Baxter v. State Teachers' Retirement System* (2017) 18 Cal.App.5th 340 and *Blaser v. State Teachers' Retirement System* (2019) 37 Cal.App.5th 349, in which CalSTRS was permitted prospectively to correct its erroneous calculation of retirement benefits because "[t]he continuing obligation of CalSTRS was to pay correctly calculated

benefits-an obligation that recurred with every pension payment made.”

In the unpublished portion of the decision, the Court of Appeal also rejected Plaintiff’s invocation of the doctrines of “delayed discovery” and estoppel. Because “[a]ll of the statutes allegedly violated required the County to provide specific public notice at a public meeting of the board of supervisors,” the Court noted that “[a]ny violation would therefore be apparent from the public records of the County Board of Supervisors’ meetings from 2002 and 2003.” In support of this conclusion, the Court cited law regarding the application of open meeting requirements of the Brown Act to local public agencies. The Court further noted, “Plaintiff argues that public records, ‘were superseded by the subsequent misrepresentations of Respondents,’ but the only alleged misrepresentations were made in response to a 2012 grand jury report on the issue. This conduct took place well outside of the limitations period and therefore does not estop Respondents from invoking the statute of limitations.” For this additional reason, the three-year statute of limitations barred plaintiff’s challenge.

Nossaman represented SCERA through the superior and appellate court proceedings. Ashley Dunning, co-chair of the Public Pensions & Investments Group, was lead trial and appellate counsel, with appellate assistance from Jennifer Meeker.