



California Courts Continue to Address Vested Rights Lawsuits

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On November 24, 2020, the California Supreme Court denied two requests for depublication of the First Appellate District's decision *Marin Assn. of Public Employees v. Marin County Employees' Retirement Assn.* (2016) 2 Cal.App.5th 674 ("*Marin County*"). *Marin County* was the first published decision of a lower court of appeal upholding the constitutionality of amendments that the Public Employees' Pension Reform Act of 2013 ("PEPRA") made to the definition of "compensation earnable" in the County Employees Retirement Law of 1937 ("CERL"). Information on *Marin County* is available in our September 2020 Nossaman eAlert.

Meanwhile, developments arising from the California Supreme Court's July 30, 2020 decision, *Alameda County Deputy Sheriff's Association, et al. v. Alameda County Employees' Retirement Association, et al. (State Of California)* (2020) 9 Cal.5th 1032 ("*Alameda*") continue. Information on *Alameda* is available in our July 2020 Nossaman eAlert.

First, in one felony forfeiture case, *Wilmot v. Contra Costa County Employees' Retirement Association* (2018) 29 Cal. App. 5th 846 ("*Wilmot*"), there will likely be an appellate decision on the merits by late winter. After deciding *Alameda*, the California Supreme Court transferred *Wilmot* back to the First Appellate District, Division Two, with "directions to vacate its decision and to reconsider the cause in light of [the *Alameda* decision]." Subsequently, both intervener State of California and plaintiff *Wilmot* submitted supplemental briefing. The cause was submitted on October 26, 2020, without oral argument. Therefore, a decision in *Wilmot* is expected by late February 2021.

In the second pending felony forfeiture case that the California Supreme Court transferred back to the Second Appellate District, Division Four (*Hipsher v. Los Angeles County Employees Retirement Assn.* (2018) 24 Cal. App. 5th 740 ("*Hipsher*")), after supplemental briefing, the case is now scheduled for oral argument on December 10, 2020 at 1:30 PM PT. A decision in *Hipsher* is expected within 90 days or oral argument, thus, by early March 2021.

In light of the California Supreme Court's decision to keep *Marin County* published, the courts in both *Hipsher* and *Wilmot* will be able to draw on this additional legal analysis to assist them in their resolution of the constitutional issues that are presented, along with the guidance of the *Alameda* decision itself.

The road nevertheless remains a bit challenging for California public pension systems and their boards, as they take actions to implement PEPRAs consistent with the *Alameda* and *Marin* decisions, at times in the face of challenges by members, and in some cases by participating employers. We comment on some of these governance challenges in our October 2020 article.

Meanwhile, a next wave of litigation continues in superior courts throughout California, with additional *Alameda*-related litigation pending in at least three counties. Stay tuned.