

1 **WHEREAS**, In early 1998, FCERA, the Board of Retirement, and the County
2 were sued in three separate, and later consolidated, actions (the "Fresno *Ventura* 2
3 Cases") by a class of members consisting of all retirees, deferred retirees, beneficiaries
4 and employees who were at that time members of FCERA ("FCERA Class Members").

5 **WHEREAS**, On December 15, 2000, the San Francisco Superior Court issued a
6 Judgment in the Fresno *Ventura* 2 Cases approving a Revised Settlement Agreement
7 that resolved all outstanding issues relating to the determination of "compensation
8 earnable," pursuant to CERL Section 31461, as between the County, FCERA Class
9 Members, FCERA and the Board of Retirement ("Settlement Agreement").

10 **WHEREAS**, Through December 11, 2011, the Court employees' "compensation
11 earnable" was reported to FCERA via the County's payroll systems. The Court was
12 previously subject to an earn code resolution adopted by the Board of Retirement on
13 December 6, 2006, as supplemented by an earn code list for the Court that was
14 approved by the Board of Retirement on March 21, 2012.

15 **WHEREAS**, On January 6, 2012, the Court began reporting "compensation
16 earnable" to FCERA via a private payroll service provider. Accordingly, it is appropriate
17 for the Board to adopt this "compensation earnable" earn code resolution for the Court,
18 which is separate from the County's "compensation earnable" earn code resolution.

19 **WHEREAS**, Effective January 1, 2013, the Legislature amended CERL section
20 31461. One of the amendments to CERL section 31461 was to exclude "[p]ayments for
21 additional services rendered outside of normal working hours, whether paid in a lump
22 sum or otherwise" from "compensation earnable." The Board of Retirement has
23 determined that this amendment requires the exclusion of "standby" and "on call" earn
24 codes for all FCERA members subject to CERL section 31461.

25 **WHEREAS**, This Earn Code Resolution is not intended to limit the Board's
26 statutory authority and responsibility to exclude from "compensation earnable" "any
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1 compensation determined by the board to have been paid to enhance a member's
2 retirement benefit under that system," as set forth in CERL section 31461(b)(1).

3 **WHEREAS**, After considering all of the information available to the Board, and
4 exercising its judgment in the matter,

5 **NOWTHEREFORE BE IT RESOLVED,**

6 (A) That the Board of Retirement hereby determines that only those Court
7 earn codes set forth in the list attached hereto as Exhibit A shall be
8 included in "compensation earnable" and all other Court earn codes are
9 excluded from "compensation earnable." Exhibit A shall supersede the
10 earn code lists attached to the December 6, 2006 earn code resolution, as
11 supplemented by the earn code list for the Court approved by the Board of
12 Retirement on March 21, 2012

13 (B) That the Board of Retirement hereby adopts the following Policies and
14 Guidelines, which shall be separate from the Board's Bylaws and the
15 Board's Regulations:

16 1. Elements to be Included in "Compensation Earnable".

17 Remuneration earned and received in cash by the employee for
18 working the ordinary time required of other employees in the same
19 grade/class during normal working hours shall be included in
20 "compensation earnable," including but not limited to the following
21 items of compensation, and others substantially similar to them:

22 Base Salary

23 "Differential" Pay and other similar additional compensation paid to
24 employees for special skills or services they provide or special
25 circumstances of their employment during normal working hours

26 Bilingual Premium Pay

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Uniform Allowance (paid in cash, not in-kind)

Educational Incentive Pay

Longevity Incentive

Payoffs of Vacation and Sick Leave and Holiday, to the extent earned and payable before termination under the applicable MOU

Employee Contributions to Deferred Compensation Plan

“Overtime” required to be worked that is ordinarily worked by all others in the same grade/class/rate of pay

Compensatory Time (if not excluded as “true overtime” (see definition below) and to the extent in excess of minimum required reserve)

Court Transcript Fees and per diems paid to Court Reporters, to the extent earned (pro rated on a daily basis over the period of time between the date of the order and date of filing of the completed transcript) and received prior to separation

Flexible Benefits to the extent paid in cash

Such additional elements as the Board may determine in the future.

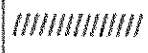
2. Elements to be Excluded From “Compensation Earnable”.

Remuneration or other value received by the employee that is not earned and paid in cash to the employee for working the ordinary time required of other employees in the same grade/class during normal working hours shall be excluded from “compensation earnable,” including but not limited to the following items, and others substantially similar to them:

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- True Overtime (amounts paid for working in excess of the time required and ordinarily worked by all others in the same grade/class)
- Employer Contributions to Deferred Compensation Plan
- Employer Contributions to Retirement System
- Employer "Pick-up" of Employee Contributions to Retirement System
- Flexible Benefits provided in-kind (payments to 3d-party providers or otherwise)
- Terminal Pay
- Expense Reimbursements
- In-kind Advantages (e.g., food, lodging, laundry, fuel)
- Fees, Licenses, Memberships provided to FCERA members by their employers
- Standby and On Call
- Such additional elements as the Board may determine in the future.

3. This Earn Code Resolution does not, in any way, limit the Board's statutory authority and responsibility to exclude from "compensation earnable" "any compensation determined by the board to have been paid to enhance a member's retirement benefit under that system," as set forth in Government Code section 31461(b)(1). Thus, amounts reported to the Board pursuant to this Earn Code Resolution are subject to exclusion from a member's "compensation earnable," pursuant to Government Code section 31461(b)(1).



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(C) That this Resolution shall be effective immediately upon adoption.

Adopted at a meeting of the Board of Retirement of the Fresno County Employees' Retirement Association, held on this 17th day of July, 2013 by the following vote, to wit:

Ayes: *Unanimous*

Nays:

Abstain:

Absent: *Wheeler*

BOARD OF RETIREMENT

By *[Signature]*
Dr. Rod Coburn III, Chairman

Attest: *[Signature]*
Phillip Kapley, Retirement Administrator