

1 NOSSAMAN LLP  
2 ASHLEY K. DUNNING (SBN 185014)  
3 adunning@nossaman.com  
4 ALEXANDER WESTERFIELD (SBN 295676)  
5 awesterfield@nossaman.com  
6 50 California Street, 34th Floor  
7 San Francisco, CA 94111  
8 Telephone: 415.398.3600  
9 Facsimile: 415.398.2438

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County of Fresno  
By: Maria Marselas, Deputy

6 MAYA HAMOUIE (SBN 321537)  
7 mhamouie@nossaman.com  
8 777 South Figueroa Street, 34<sup>th</sup> Floor  
9 Los Angeles, CA 90017  
10 Telephone: 213.612.7800  
11 Facsimile: 213.612.7801

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14 Attorneys for Petitioners City of Fresno Fire & Police Retirement  
15 System and City of Fresno Employees Retirement System  
16

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
18 FOR THE COUNTY OF FRESNO  
19

17 CITY OF FRESNO FIRE & POLICE  
18 RETIREMENT SYSTEM AND CITY OF  
19 FRESNO EMPLOYEES RETIREMENT  
20 SYSTEM,

Petitioners,

vs.

21 CITY OF FRESNO,  
22

Respondent.

Case No: [24CECG03835](#)

*Public Agency – No Filing Fee Required  
Government Code § 6103*

**PETITION FOR WRIT OF MANDATE  
(CODE CIV. PROC. § 1085) AND  
COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

1 Petitioners the City of Fresno Fire & Police Retirement System (“F&PRS”) and City of  
2 Fresno Employees Retirement System (“ERS”) (collectively, “CFRS,” the “Retirement  
3 Systems,” or “Petitioners”) allege the following against Respondent City of Fresno (the “City”):

4 **INTRODUCTION**

5 1. F&PRS and ERS are single-employer, contributory, defined benefit plans that  
6 provide lifetime retirement, disability, and death benefits to each of their respective members and  
7 their members’ qualifying beneficiaries based on the services such members rendered as  
8 employees of the City of Fresno. The Fire and Police Retirement Board for F&PRS and the  
9 Employees Retirement Board for ERS (collectively, the “Boards”) are responsible for  
10 establishing policies governing the administration of the retirement plan, making benefit  
11 determinations in accordance with the Fresno City Charter (“Charter”), Fresno City Municipal  
12 Code (“Municipal Code”), and related rules, regulations and policies adopted by the Boards  
13 (collectively, the CFRS “Plan Document”), and other applicable law, and managing the  
14 investment of the Retirement Systems’ assets.

15 2. Section 17(a) of the California Constitution expressly provides that the retirement  
16 board of a public retirement system has “the sole and exclusive responsibility to administer the  
17 system in a manner that will assure prompt delivery of benefits and related services to the  
18 participants and their beneficiaries.” Further, Section 17(e) of the California Constitution  
19 provides that the retirement board of a retirement system, “shall have the sole and exclusive  
20 power to provide for actuarial services in order to assure the competency of the assets of the  
21 public pension or retirement system.” The Boards accordingly engage an independent actuarial  
22 consulting firm to conduct annual actuarial valuation of the Retirement Systems, respectively,  
23 and to recommend employer and employee contribution rates for each of the Boards’  
24 consideration.

25 3. California law requires that the City pay the actuarially-determined contribution  
26 rates that the Boards determine are due. Further, CFRS’ members and their qualified  
27 beneficiaries have a vested right to have the City pay its own required contributions to CFRS,  
28 and to transfer the correct amount of their own required member contributions to CFRS on a bi-

1 weekly basis in conjunction with City payments of compensation to its employees. These  
2 established rules are grounded in both the California Constitution and the Retirement Systems'  
3 Plan Documents and have been recited in California case law for over fifty years. However, the  
4 City has refused and failed to pay the City's full share of the Net Required Contributions adopted  
5 by the Boards applicable to the fiscal year starting July 1, 2024, and the City has stated that it  
6 intends to pay contributions based on the rates that the Boards adopted for the immediately  
7 preceding fiscal year instead. The City also has not adjusted the required contributions to CFRS  
8 of active members of ERS (the F&PRS member contribution rate did not change from the last  
9 fiscal year to the current fiscal year). These City actions are resulting in a material  
10 underpayment of employer and ERS employee contributions to the Retirement Systems, and they  
11 therefore compromise the competency of the Retirement Systems' assets to pay the vested  
12 benefits the City promised to them in the Plan Document in violation of California law.

13 4. Petitioners accordingly seek (1) a peremptory writ of mandate ordering the City of  
14 Fresno to implement the employee and employer contribution rate changes that the F&PRS  
15 Board and the ERS Board require to properly fund F&PRS and ERS, respectively, effective July  
16 1, 2024, with retroactive payments from that date forward plus interest; (2) a declaration that the  
17 City has a legal duty to implement the employee and employer contribution rate changes,  
18 effective July 1, 2024, as detailed in the Board-adopted Actuarial Valuation Reports to fund  
19 F&PRS and ERS, respectively; and (3) permanent injunctions to enforce the City's duty to  
20 implement the employee and employer contribution rate changes, effective July 1, 2024, with  
21 retroactive payments due to CFRS from that date forward, plus interest at CFRS' assumed rate of  
22 return.

23 **PARTIES**

24 5. Petitioner City of Fresno Fire & Police Retirement System was established on  
25 June 1, 1955, under Charter Section 910 and is maintained and governed by Articles 3 and 4 of  
26 Chapter 3 of the Municipal Code. F&PRS provides lifetime retirement, disability, and death  
27 benefits to all full-time sworn safety members employed by the City of Fresno.

28



1           12.     ERS is administered by the Employees Retirement Board (the “ERS Board”),  
2 which operates under the authority vested in it by Article XVI, Section 17 of the California  
3 Constitution, Article 5 of Chapter 3 of the City of Fresno Municipal Code and other applicable  
4 law.

5           13.     The California Pension Protection Act of 1992, adopted by the voters of  
6 California as an amendment to Article XVI, Section 17 of the California Constitution to confirm  
7 the fiduciary role of public retirement system boards in California, provides that “members of the  
8 Retirement Board of a public retirement system shall discharge their duties . . . solely in the  
9 interest of, and for the exclusive purpose of providing benefits to participants and their  
10 beneficiaries, minimizing employer contribution thereto, and defraying reasonable expenses of  
11 administering the System.”

12           14.     Fiduciary oversight of F&PRS and ERS is vested with their respective Boards.  
13 The Boards for the Retirement Systems are responsible for establishing policies governing the  
14 administration of the Retirement Systems, making benefit determinations, and managing the  
15 investment of the Retirement Systems’ assets.

16           15.     The ERS Board, in conjunction with the F&PRS Board, appoints, directs and  
17 oversees a Retirement Administrator. The Retirement Administrator is responsible for the overall  
18 management and administration of F&PRS and ERS in accordance with the direction, policy,  
19 and goals set by the Boards and for providing administrative support to the Boards. Working  
20 closely with the Boards, the Retirement Administrator and their staff develop investment and  
21 benefits policies, coordinate member services and programs, and develop long-term strategies  
22 that fulfill F&PRS’ and ERS’ missions and goals. The Boards oversee the Retirement  
23 Administrator and their staff in the performance of their duties in accordance with the Plan  
24 Document.

25           16.     The Retirement Systems are authorized by the California Constitution, the  
26 Municipal Code, and the policies of their respective Boards to invest in any form or type of  
27 investment deemed prudent by their Boards. The Retirement Systems’ Investment Objectives  
28 and Policy Statement establishes and outlines the responsibilities of the various parties that are

1 associated with managing assets of the Retirement Systems, consistent with applicable sections  
2 of the Fresno Municipal Code, federal laws and Article XVI, Section 17(c) of the California  
3 Constitution of the State of California, which provides, in pertinent part:  
4 the members of the Retirement Board of a public  
5 pension or retirement system shall discharge their  
6 duties...with the care, skill, prudence, and diligence  
7 under the circumstances then prevailing that a  
8 prudent person acting in a like capacity and familiar  
9 with these matters would use in the conduct of an  
10 enterprise of a like character and with like aim.

11 17. The Boards engage an independent actuarial consulting firm (the “Consulting  
12 Actuary”) to conduct annual actuarial valuation of the Retirement Systems. The purpose of the  
13 actuarial valuation is to assess the magnitude of the benefit commitments, compare those  
14 commitments to the assets expected to be available to support those commitments, and determine  
15 employer contributions necessary to pay for those commitments over periods of time established  
16 by the Boards in consultation with the Consulting Actuary.

17 18. The Consulting Actuary also determines the active member contributions due to  
18 CFRS for each “tier” of members of each Retirement System, with F&PRS having “Tier 1” and  
19 “Tier 2” members, and ERS including only one tier of membership.

20 19. The Consulting Actuary prepares an Actuarial Valuation Report which details the  
21 recommended employer and employee contribution rates, and the Board adopts the appropriate  
22 rates in accordance with its plenary and fiduciary authority to do so.

23 20. Participating employers in defined benefits retirement systems in California are  
24 required to adopt those actuarially-determined rates.

### 25 **CONTRIBUTIONS TO F&PRS**

26 21. The responsibility for both City and employee contributions to F&PRS is  
27 mandated by the City of Fresno Municipal Code Sections 3-319, 3-324, and 3-405. Contributions  
28 are made by the members and the employer at rates recommended by F&PRS’ independent  
Consulting Actuary and adopted by the F&PRS Board. All active members are required to make  
contributions to F&PRS.

1 22. Employee contribution rates vary in Tier 1 according to entry age and are  
2 designed to provide funding for approximately one-third of the basic only retirement benefits.

3 23. Employee contribution rates in Tier 2 are established at a level percentage of  
4 pensionable base pay.

5 24. The member contribution rates (“2024–2025 F&PRS Member Contribution  
6 Rates”) required to fund vested retirement benefits are provided in the F&PRS Actuarial  
7 Valuation and Review, as of June 30, 2023, that was prepared by the CFRS’ Consulting Actuary  
8 and presented to and adopted by the F&PRS Board at its November 28, 2023 meeting (“F&PRS  
9 2023 Valuation Report”).

10 25. The City’s contribution rates are designed to provide funding for the remaining  
11 regular retirement and cost-of-living benefits, as well as all disability and survivors’ benefits.  
12 The F&PRS 2023 Valuation report provides 2024–2025 Employer Contribution Rate as  
13 determined by the Consulting Actuary and adopted by the F&PRS Board.

14 **CONTRIBUTIONS TO ERS**

15 26. The responsibility for both City and employee contributions to ERS are mandated  
16 by the City of Fresno Municipal Code Sections 3-523 and 3-529. Contributions are made by the  
17 members and the employer at rates recommended by ERS’ independent actuary and adopted by  
18 the ERS Board. Employee contribution rates vary according to age and are designed to provide  
19 funding for approximately one third of retirement benefit basic normal costs and one-half of the  
20 cost-of-living component. All active members of ERS are required to make contributions to the  
21 System.

22 27. The member contribution rates (“2024–2025 Member Contribution Rates”) required to fund vested retirement benefits are provided in the ERS Actuarial Valuation and  
23 Review, as of June 30, 2023, that was prepared by the CFRS’ Consulting Actuary and presented  
24 to and adopted by the ERS Board at its November 28, 2023 meeting (“ERS 2023 Valuation  
25 Report”).

26  
27 28. The employer contribution rate is designed to provide funding for the remaining  
28 regular retirement and cost-of-living benefits, as well as all regular disability and survivors’

1 benefits. The ERS 2023 Valuation report provides the mandates 2024–2025 Employer  
2 Contribution Rate as determined by the Consulting Actuary and adopted by the ERS Board.

3 29. One of the primary funding objectives of F&PRS and ERS is to establish  
4 contribution rates which, over time, will remain level as a percentage of payroll unless the  
5 retirement systems’ benefit provisions are changed.

6 **THE BOARDS’ CONSTITUTIONAL POWER**

7 30. The Boards are governed by Article XVI, Section 17 of the California  
8 Constitution.

9 31. Article XVI, Section 17(b) of the Constitution of the State of California provides  
10 that:

11 the members of the Retirement Board of a public retirement system  
12 shall discharge their duties ... solely in the interest of, and for the  
13 exclusive purpose of providing benefits to, participants and their  
14 beneficiaries, minimizing employer contributions thereto, and  
15 defraying reasonable expenses of administering the System. A  
16 Retirement Board’s duty to its participants and their beneficiaries  
17 shall take precedence over any other duty.

18 32. The Boards do not operate under the control of the City Council. Section 17(a) of  
19 the California Constitution provides that the retirement board of a public retirement system has  
20 “the *sole and exclusive* responsibility to administer the System in a manner that will assure  
21 prompt delivery of benefits and related services to the participants and their beneficiaries.”  
22 (Emphasis added.)

23 33. Section 17(e) provides that the retirement board of a retirement system, “shall  
24 have the *sole and exclusive* power to provide for actuarial services in order to assure the  
25 competency of the assets of the public pension or retirement system.” (Emphasis added.)

26 **THE CITY’S REFUSAL TO IMPLEMENT THE EMPLOYER OR EMPLOYEE**  
27 **CONTRIBUTION RATE CHANGES RECOMMENDED BY THE ACTUARY AND**  
28 **APPROVED BY THE BOARDS**

34. The City, through City Manager Georgeanne White (the “City Manager”),  
informed Petitioners that the City is not and will not be implementing either the employer or  
employee contribution rate changes for fiscal year 2024–2025 that each Board requires to be paid



1 to properly fund F&PRS and ERS, respectively, as detailed in the Board-adopted Actuarial  
2 Valuation Reports for each Retirement System. Rather, the City stated that it intends pay  
3 contributions based on the rates that the Boards adopted for the prior fiscal year.

4 35. The City’s refusal to implement the actuarially-determined 2024–2025 member  
5 and employer contribution rates is resulting, and will continue to result, in a material  
6 underpayment of employer and employee contributions to CFRS.

7 **CALIFORNIA LAW REQUIRES THE CITY TO FUND AMOUNTS RECOMMENDED**  
8 **BY THE ACTUARY AND APPROVED BY THE BOARDS**

9 36. There is no basis for the City’s refusal to timely pay the contribution rates that the  
10 Boards adopted. California law requires that the City pay the actuarially determined contribution  
11 rates that the Boards determine are due. Further, CFRS’ active, deferred, and retired members  
12 and their qualified beneficiaries have a vested right to have the City pay their own required  
13 contributions to CFRS. Additionally, CFRS’ active members have a vested right to have the City  
14 deduct employee contributions they owe to the Retirement Systems and transmit those payments  
15 to CFRS, such that those members and their beneficiaries may receive the retirement and related  
16 benefits they have and will continue to earn for their pensionable services rendered to the City.

17 37. These established rules of law are grounded in the California Constitution and  
18 have been expressly affirmed in two published court of appeal decisions published in 2024, as  
19 well as a recent Supreme Court precedent.

20 38. In *Los Angeles County Employees Retirement Association (LACERA) v. County*  
21 *of Los Angeles* (“LACERA”), the Second District Court of Appeal ordered that LACERA’s  
22 petition for a writ against the County of Los Angeles be granted, stating therein that under  
23 Article XVI, Section 17 of the California Constitution, public retirement boards have the  
24 “plenary” and “sole and exclusive” authority to administer retirement systems, which includes,  
25 but is not limited to, the setting of actuarially-determined contribution rates that employers are  
26 *required* to pay. Further, the court concluded that the County was *required* to comply with its  
27 “ministerial” obligation to implement fiduciary decisions made by the LACERA Boards. (See  
28 also *Mijares v. Orange County Employees Retirement System* (2019) 32 Cal.App.5th 316.) That

1 ministerial obligation is the same ministerial duty that *requires* the City to pay Petitioners the  
2 actuarial-determined contributions the Boards have determined is due for this fiscal year to  
3 F&PRS and ERS.

4 39. In *Alameda Health System, et al. v. Alameda County Employees' Retirement*  
5 *Association, et al.* (2024) 100 Cal.App.5th 1159, the First District Court of Appeal affirmed the  
6 trial court's conclusion that participating employer Alameda Health System ("AHS") *must* pay  
7 employer contributions based on the actuarial methodology set by the Board of Retirement of  
8 Alameda County Employees' Retirement Association ("ACERA"), and that ACERA was not  
9 required to have its actuary (Segal Company) conduct additional actuarial studies that the  
10 employer demanded it conduct. *AHS* establishes definitively that the City has no authority to  
11 refuse to implement the current contribution rates the Boards determined, in consultation with  
12 their retained actuary, are due to each of the retirement systems they govern. (See also *City of*  
13 *Fresno v. Superior Court* (1984) 155 Cal.App.3d 678 [upholding city tax "to the extent proceeds  
14 thereof are utilized to meet the City's obligation to maintain retirement benefits at the level that  
15 existed under [ERS and F&PRS] as of the date of the approval of the 1957 City Charter for all  
16 present and future employees].)

17 40. With respect to vested rights, the California Supreme Court reaffirmed in  
18 *Alameda County Deputy Sheriff's v. Alameda County Employees' Retirement Association, et al.*  
19 (2020) 9 Cal.5th 1032 ("*Alameda*"), that the contract clause of the California Constitution  
20 (commonly referred to as "the California Rule" in the public pension context) entitles members  
21 of public retirement systems the right to earn the vested benefits due to them by statute, and the  
22 City's current underfunding of those benefits by refusing to pay both the employer and employee  
23 contributions required by CFRS risks compromising those constitutionally-protected rights. (See  
24 also *Board of Administration v. Wilson* (1997) 52 Cal.App.4th 1109, 1137 [delayed funding of  
25 retirement system by plan sponsor constitutes violation of vested rights of members]; *Chapin v.*  
26 *City Commission of City of Fresno* (1957) 149 Cal.App.2d 40 [reciting vested rights principles  
27 affirmed in *Alameda*].)

28

1 41. Given that the City continues to refuse to make the required contributions to  
2 F&PRS and ERS in direct contravention of the California Constitution, California case law, and  
3 the City's own Charter, Petitioners are forced to bring this action against the City.

4 **FIRST CAUSE OF ACTION**  
5 **(WRIT OF MANDATE)**

6 42. Petitioners incorporate and re-allege the allegations contained in paragraphs 1  
7 through 41.

8 43. Under California law, Respondent the City has a ministerial duty to implement  
9 the employee and employer contribution rate changes that the F&PRS Board and the ERS Board  
10 require to be paid to properly fund F&PRS and ERS, respectively, as detailed in the Board-  
11 adopted Actuarial Valuation Reports for each retirement system, as of the July 1, 2024 effective  
12 date of those rate changes.

13 44. The City, however, stated that it intends to pay contributions based on the rates  
14 that the Boards adopted for the *prior* fiscal year, which would result in a material underpayment  
15 of employee and employer contributions to CFRS. The applicable contribution rates were due to  
16 CFRS, covering the pay period inclusive of July, 2024 through the filing of this Petition, and the  
17 City did not pay them and informed CFRS that it will not pay the currently applicable rates. The  
18 City has therefore violated its ministerial duty by failing to implement the contribution rate  
19 changes, and it has thus impaired CFRS' ability to receive and timely invest those assets to  
20 secure the competency of CFRS assets to paid vested benefits to members and beneficiaries  
21 when they are due.

22 45. Petitioners are therefore entitled to a peremptory writ of mandate ordering the  
23 City to implement the employee and employer contribution rate changes that each Board adopted  
24 on November 28, 2023, to retroactively implement those contribution rate changes to July 1,  
25 2024, and to pay interest on retroactively implemented contribution rate changes.

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1 **SECOND CAUSE OF ACTION**

2 **(DECLARATORY AND INJUNCTIVE RELIEF)**

3 46. Petitioners incorporate and re-allege the allegations contained in paragraphs 1  
4 through 45.

5 47. An actual controversy now exists between Respondent the City and Petitioners  
6 CFRS with respect to the employee and employer contribution rates should be paid by the City to  
7 fund F&PRS and ERS, respectively.

8 48. On the one hand, Petitioners contend that the City must implement the employee  
9 and employer contribution rate changes as detailed in the Actuarial Valuation Reports adopted  
10 by the F&PRS Board and the ERS Board to properly fund F&PRS and ERS, respectively.

11 49. On the other hand, the City contends that it may pay contributions based on the  
12 rates that the Boards adopted for the prior fiscal year.

13 50. Petitioners desire a judicial determination by this Court as to the employee and  
14 employer contribution rates that should be paid by the City to fund F&PRS and ERS under the  
15 California Constitution and California law.

16 51. Petitioners have informed the City of the employee and employer contribution  
17 rates that are required to be paid to fund the retirement systems on an actuarially sound basis.  
18 However, the City refuses to implement the contribution rate changes and continues to state that  
19 it will pay contributions based on the rates that the Boards adopted for the prior fiscal year,  
20 which is resulting in a material underpayment of employee and employer contributions to CFRS.

21 52. Petitioners respectfully request that the Court make judicial determinations that  
22 the City has a legal duty to implement the employee and employer contribution rate changes as  
23 detailed in the Board-adopted Actuarial Valuation Reports to fund F&PRS and ERS,  
24 respectively.

25 53. Petitioners also seek a permanent injunction to enforce the respective rights and  
26 duties alleged herein.

27 **PRAYER FOR RELIEF**

28 WHEREFORE, Petitioners pray for judgment as follows:

1           1.       For a peremptory writ of mandate ordering the City to implement the employee  
2 and employer contribution rate changes that the F&PRS Board and the ERS Board adopted on  
3 November 28, 2023, effective July 1, 2024.

4           2.       For a declaration that the City has a legal duty to implement the employee and  
5 employer contribution rate changes as detailed in the Board-adopted Actuarial Valuation Reports  
6 to fund F&PRS and ERS, respectively, effective July 1, 2024.

7           3.       For a permanent injunction to enforce the City's duty to implement the employee  
8 and employer contribution rate changes as detailed in the Board-adopted Actuarial Valuation  
9 Reports;

10          4.       For pre-judgment interest at 10% per annum;

11          5.       For an award of costs incurred herein;

12          6.       For an award of attorneys' fees incurred herein pursuant to Code of Civil  
13 Procedure section 1021.5; and

14          7.       For such other and further relief as this Court deems just and proper.

15 Dated: August 30, 2024

NOSSAMAN LLP  
ASHLEY K. DUNNING  
ALEXANDER WESTERFIELD  
MAYA HAMOUIE

18  
19 By:   
Ashley K. Dunning

20 Attorneys for Petitioners City of Fresno Fire &  
21 Police Retirement System and City of Fresno  
22 Employees Retirement System  
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**NO VERIFICATION NEEDED**

Petitioners, the City of Fresno Fire and Police Retirement System and the City of Fresno Employees Retirement System, are “public agencies” within the meaning of Code of Civil Procedure section 446, and thus this petition “need not be verified” for it to have the operative effect of a verified petition. (Code Civ. Proc. § 446(a); *Murrieta Valley Unified School Dist. v. County of Riverside* (1991) 228 Cal.App.3d 1212, 1222.)