

**ATTACHMENT B**

**Staff Argument**

## STAFF'S ARGUMENT TO ADOPT THE PROPOSED DECISION

Melanie A. Doyle (Respondent) first established membership with CalPERS by employment with San Diego County Schools on April 16, 1990. She separated from that employment on May 26, 1992.

On June 1, 1992, Respondent began working for the City of San Diego, whose retirement system is administered by San Diego City Employees' Retirement System (SDCERS). Respondent requested and was granted reciprocity between CalPERS and SDCERS for this first movement in employment.<sup>1</sup> She separated from her employment with the City of San Diego on April 27, 2006.

On May 8, 2006, Respondent began working for the California State University, San Diego (CSUSD), a CalPERS employer. She requested reciprocity from SDCERS. On June 21, 2006, SDCERS approved reciprocity with CalPERS for this second movement in employment. She separated from CSUSD on January 15, 2010.

For the next approximately 8 years, Respondent was employed by different employers that were neither a part of CalPERS nor SDCERS. Then, on February 5, 2018, Respondent returned to work for the City of San Diego. She never requested reciprocity for this third movement in employment.

On October 8, 2021, Respondent applied for service retirement. Her application was approved and she retired from the City of San Diego effective January 3, 2022. On that same date, CalPERS sent a letter to Respondent informing her of her effective retirement date, final compensation calculation, and projected monthly allowance. She began receiving her monthly retirement allowance beginning February 8, 2022.

Respondent disagreed with the amount of her monthly retirement allowance because CalPERS used the final compensation she earned with her last CalPERS employer, CSUSD; an employer she left in 2010. Respondent believes that prior to her retirement she had established reciprocity with SDCERS, so the final compensation that should be used to calculate her monthly allowance should be the higher compensation she earned with the City of San Diego between 2018-2022.

Reciprocity, which is defined and controlled by statute, allows members to move from a CalPERS public employer to a public employer under a different retirement system, within a specified amount of time, without losing valuable retirement and related benefit rights. SDCERS is a reciprocal retirement system with CalPERS. The reciprocity Respondent established between CalPERS and SDCERS for the first and second movements is not in dispute. Respondent properly submitted documents to the relevant retirement systems for each movement to inform them of her request to establish

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<sup>1</sup> Each time an employee moves from one CalPERS employer to a different public retirement system that shares reciprocity with CalPERS, it is known as a "movement."

reciprocity and obtain findings from each system. However, Respondent did not submit documents concerning reciprocity for her 2018-2022 employment with the City of San Diego.

On October 7, 2021, Respondent used the CalPERS online tool to request a retirement estimate based on a projected retirement of January 3, 2022. CalPERS issued a response based on the information Respondent provided. Respondent used her highest compensation obtained from the City of San Diego during 2018-2022. CalPERS provided an estimate with a number of monthly retirement allowance values, depending on the type of retirement Respondent chose. The estimate clearly indicated it was based on “the information [Respondent] provided on her estimate request form.” Most important, it states:

You indicated that you have established reciprocity with another public retirement system. Reciprocity is an agreement among public retirement systems that allows a member to move from one public employer to another within a specific time limit, which may be used to qualify for service retirement.... Information regarding reciprocity can be found within the *When you Change Retirement Systems* (PUB 16) that's available online at [www.calpers.ca.gov](http://www.calpers.ca.gov).

At hearing, CalPERS provided three copies of the PUB 16, dated 2005, 2009 and 2017. All three PUBs indicate that to establish reciprocity with another system, the movement must occur within six months of leaving employment with the previously qualified system. The PUBs also indicate that reciprocity is determined by the law in effect at the time of the movement between employers and retirement systems.

Respondent attended a retirement seminar in November 2021 where CalPERS informed her that although she listed the higher final compensation earned from 2018-2022 SDCERS in her retirement estimate, she could not use that salary because of the lapse in time. Her last employer for purposes of calculating her monthly benefit was CSUSD, a CalPERS employer she left in 2010. Entries in CalPERS' Customer Touch Point Notes indicate that Respondent was informed several times that her 2010 CSUSD salary would be used to calculate her retirement allowance, because there was no reciprocity for her City of San Diego employment from 2018-2022.

On March 23, 2022, CalPERS informed Respondent that she had established reciprocity with SDCERS beginning in 1992 and with CSUSD beginning in 2006. That reciprocity ended in 2010. Due to the several year lapse between 2010 and 2018, Respondent was precluded from reciprocity being established for her employment with SDCERS from 2018-2022. On April 19, 2022, CalPERS determined that Respondent was ineligible for reciprocity on her third movement.

Respondent appealed this determination and exercised her right to a hearing before an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH). A

hearing was held on November 6, 2023. Respondent represented herself at the hearing. None of her former employers appeared at the hearing.

Prior to the hearing, CalPERS explained the hearing process to Respondent and the need to support her case with witnesses and documents. CalPERS provided Respondent with a copy of the administrative hearing process pamphlet, answered Respondent's questions and clarified how to obtain further information on the process.

Respondent testified on her own behalf that when she submitted her retirement application, she believed that CalPERS would approve reciprocity. Respondent believes CalPERS violated its fiduciary duty by denying her reciprocity on her third movement, and CalPERS should not be able to rely on a statute to overcome that fiduciary duty. If Respondent had known she did not meet the requirements for reciprocity for her third movement, she would have made different retirement plans.

After considering all of the evidence introduced, as well as arguments by the parties, the ALJ denied Respondent's appeal. The ALJ found that Respondent had the burden of proving she was entitled to reciprocity pertaining to her third movement. The ALJ held that Respondent did not meet the statutory requirements for reciprocity because she had a longer than six-month lapse between the 2010 CalPERS covered employment and 2018 SDCERS covered employment. Thus, reciprocity did not apply. The ALJ also found that Respondent could not avail herself of equitable estoppel because CalPERS can only pay benefits when the statutes authorize payment and then only in the amount authorized. Since Respondent was never entitled to have her final compensation calculated using her 2018-2022 employment, she cannot avail herself of equitable estoppel since it would provide Respondent a benefit that she would not otherwise be entitled to. Moreover, even if CalPERS breached a fiduciary duty or provided incorrect information (which it did not), that does not warrant a finding of equitable estoppel because Respondent cannot use equitable estoppel to avail herself of a right she never had to begin with.

For all the above reasons, staff argues that the Proposed Decision should be adopted by the Board.

January 16, 2024

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