

ATTACHMENT C

RESPONDENT'S) ARGUMENT

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8 Hodi Harchegani

9 **BEFORE THE BOARD OF ADMINISTRATION**
10 **CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM**
11 **STATE OF CALIFORNIA**

12
13 In the Matter of the Appeal Regarding Final) CASE NO. 2022-0414
14 Compensation Calculation of) OAH NO. 2022070285
15 HODI HARCHEGANI,)
16 Respondent,) RESPONDENT'S ARGUMENT AGAINST
17) PROPOSED STATEMENT OF DECISION
18 and)
19 SAN DIEGO UNIFIED SCHOOL DISTRICT)
20 Respondent.)
21)

1 **I. INTRODUCTION**

2 Respondent Hodi Harchegani provides the following argument in response to the
3 Proposed Statement of Decision. Mr. Harchegani objects to the publication of the final decision
4 by the Board.

5 **II. BACKGROUND**

6 In or about April 2, 2020 San Diego Unified School District (the “District”) entered into
7 Memorandum of Understanding in response to the COVID-19 Pandemic (“MOU”). The MOU
8 is part of the record. The MOU was temporary in nature, with a term that ran from March 2020
9 to June 30, 2020. The MOU provided additional pay to employees who reported to work for the
10 March-June 30th time period. The MOU contains the following language: “School Employees,
11 including CSEA unit members, are considered disaster service workers and are subject to
12 disaster service activities assigned to them (Government Code section 3100) and provisions
13 should be made for those employees impacted by the epidemic.” See MOU, page 1.
14

15 Pursuant to the provisions of the MOU, the District made contributions to CalPERS on
16 Harchegani's behalf for the additional pay. The District intended the additional pay to be special
17 compensation and creditable income and this is evident by the District identifying the additional
18 pay as hazard pay for COVID 19. The record clearly reflects, by way of documents and
19 testimony, the District's intent to treat the pay as special compensation that was creditable to Mr.
20 Harchegani's retirement benefit. The relationship between CalPERS and the District pertaining to
21 Mr. Harchegani's retirement benefit is evident from the records and CalPERS has conceded this
22 fact.
23

24 The District reported \$8,086.44 in additional compensation for Mr. Harchegani for the
25 March-June 2020 time frame, treated it as compensation earnable, and reported to it to CalPERS.

26 **III. DISCUSSION:**

27 **A. The Proposed Statement of Decision Is Factually Inaccurate**

28 District employee Alma Delavago testified that she heard, at some point, that the

1 COVID-19 pay to District employees was not creditable income. The Proposed Decision
2 acknowledges this in paragraph 13. Ms. Delavago’s testimony was not clear as to when she
3 acquired this knowledge, and indicates that she likely became aware after Mr. Harchegani raised
4 the issue.

5
6 The Proposed Decision states that Eric Herrera was assigned to conduct a final
7 compensation review for Mr. Harchegani’s retirement application in paragraph 18, and mentions
8 that the review occurs “at the time of retirement.” The Proposed Decision uses these facts to
9 assert that CalPERS did not learn of the allegedly misclassified \$8,086.44 until after Mr.
10 Harchegani retired in December 31, 2020. See Proposed Decision ¶ 16. However CalPERS
11 own internal documents, which are part of the record, reflect that CalPERS knew of the alleged
12 error as early as September 15, 2020, which is right around the time that Mr. Harchegani
13 communicated his intent to retire to CalPERS. Below are excerpts from the documentation:

14
15 Staff Jennifer Mayes
16 Note Capture Date 9/15/2021
17 Category Type Benefit Payments
18 Note Type Workflow
19 Note Text Compensation review completed. Will process calc when spousal form is received.
20 Staff Tad Baker
21 Note Capture Date 9/15/2021
22 Category Type Compensation Review
23 Note Type Workflow
24 Note Text PCR applied to process the retirement calculation for RBSD/DBSD. This is a backend
25 review to address system trigger via
26 expedited review.
27 Staff Tad Baker
28 Note Capture Date 9/15/2021
Category Type Unknown
Note Type Participant
Note Text SPECIAL COMPENSATION: Reviewed reported payroll from 03/01/2020 -
07/31/2021. Hazard Premium was reported in
the amount of \$8086.44 and is NOT allowed pursuant to CCR section (571 or 571.1) as it is
solely in the FC period.
Prorated Longevity in the amount of \$2,502.94 from 07/01/2019 - 06/30/2020.
PCR applied to process the retirement calculation for RBSD/DBSD. This is a backend review to
address system trigger via

Respondent’s Argument Against Proposed Statement of Decision

1 expedited review.

2 Staff Jennifer Mayes

3 Note Capture Date 9/7/2021

4 Category Type Benefit Payments

5 Note Type Workflow

6 Note Text Routing to Comp Review for a Data Integrity error. A reply is needed to release member to roll. Application was received on 9/6/21.

7 Staff Jennifer Mayes

8 Note Capture Date 9/7/2021

9 Category Type Service Retirement

10 Note Type Participant

11 Note Text MSS SR application received. Spousal Signature Form (my|CalPERS 0591) needed before application can be processed.

12 See Mr. Harchegani's Exhibit M. Mr. Harchegani is informed and believes CalPERS also introduced the record as one of its Exhibits.

13 Mr. Harchegani was not made aware of the issue regarding the \$8,086.44 until after he retired. Below is an excerpt from the same record reflecting Mr. Harchegani's pertinent communications with CalPERS on when he was first made aware of the problem:

14 Staff

15 Note Capture Date 1/29/2022

16 Category Type Benefit Estimates

17 Page 9 of 15

18 Jan 30, 2023

19 2:14:06 PM

20 SPS3186

21 Customer Touch Point Report

22 Inputs

23 CalPERS ID: 2873948299

24 Customer Name: Hodi Harchegani

25 Start Date :

26 End Date :

27 Note Type Workflow

28 Note Text Hello,

I submitted retirement application on 11/1/2021. I have yet to receive confirmation letter of my benefit estimate/payment. I spoke with a calpers representative yesterday. He informed me it would take 45 days from the date of my application to receive benefit payments. To my surprise, He also told me my date of application was 1/16/22!!!
Something is definitely wrong here.

Respondent's Argument Against Proposed Statement of Decision

1 A co-worker of mine applied a week after and has already received a confirmation/estimate letter
2 and a payment for one
3 day(12/31/21) since his date of retirement was 12/30/21.

4 Please confirm I will receive my first benefit payment next week.

5 Thank you,

6 Staff

7 Note Capture Date 1/29/2022

8 Category Type Benefit Estimates

9 Note Type Workflow

10 Note Text Thank you so much for the information. I look forward to receiving my 1st payment
11 on 2/8/22.

12 Please be informed that After seeing my monthly benefit I noticed that the amount I would be
13 receiving each month is

14 much lower than expected. Will this be reviewed and adjusted and when?

15 Also, I have 1554.60 hours of sick leave that need be added to my retirement formula. Have you
16 received this information

17 and when will this adjustment be made?

18 Your prompt response is greatly appreciated.

19 Thank you,

20 Staff

21 Also, no disallowed compensation has been returned, and Mr. Harchegani has not
22 received any of the amounts he paid to CalPERS for the alleged disallowed compensation.

23 **B. The Proposed Statement of Decision Is Incomplete On Its Analysis Of Whether the
24 Additional Pay Is Special Compensation and Thus Compensation Earnable.**

25 The Proposed Statement of Decision does not provide a complete analysis and disposition
26 of whether the \$8,086.44 was special compensation, and there is no mention of any prior Board
27 finding that COVID-19 pay for school employees is not and cannot be special compensation that
28 qualifies as creditable income. The Proposed Decision only concludes that the \$8,086.44 is not
special compensation because it is not “Hazard Premium” compensation. See Proposed
Decision, paragraphs 5-10. Although it is true that the District identified the \$8,086.44 as
Hazard Pay, this does not mean that the additional amounts paid to Mr. Harchegani cannot
qualify as special compensation under applicable law. See, e.g., Cal. Code Regs. Tit. 2, §
571(a)(3) (MCO Instructor Premium) etc.¹ The Proposed Decision makes no determination on

¹ Mr. Harchegani provided training to District bus drivers.

1 these issues, and to Respondent’s knowledge, there is no determination from the Board on this
2 issue, or the broader issue of whether the additional pay is special compensation, be it Hazard
3 Pay or some other type of pay that qualifies.
4

5 **C. The Doctrine of Estoppel Applies**

6 The elements of the doctrine of equitable estoppel are that: (1) the party to be estopped
7 must be apprised of the facts; (2) he or she must intend that his or her conduct shall be acted
8 upon, or must so act that the party asserting the estoppel has a right to believe it was so intended;
9 (3) the other party must be ignorant of the true state of facts; and (4) he or she must rely upon the
10 conduct to his injury. Evid. Code § 623. Mr. Harchegani meets all four elements required for
11 estoppel, whether by CalPERS conduct or by inclusion of the District’s conduct pursuant to
12 "estoppel by privity." See, *Crumpler . Board of Administration* (1973) 32 Cal.App. 3d 567, 582-
13 583 [An estoppel binds not only the immediate parties to the transaction but those in privity with
14 them.]

15 The Proposed Decision erroneously concludes that Mr. Harchegani does not meet the
16 first element because CalPERS did not become aware of the error until the final compensation
17 review of Mr. Harchegani’s retirement application in January 2022. See Proposed Decision ¶ 11.
18 However, as set forth in preceding paragraphs, the record contains evidence establishing that
19 CalPERS knew of the problem much sooner—since at least September 15, 2020. See
20 Respondent’s Exhibit M. The record reflects the establishment of the three other elements.

21 Even more compelling, the Proposed Decision makes no acknowledgement of “estoppel
22 by privity,” where the District’s conduct meets all four elements, and thus binds CalPERS
23 irrespective of CalPERS independently meeting all elements. Here, the record reflects a
24 relationship between CalPERS and the District. The record also reflects that the District knew of
25 the facts, intended its conduct to be acted upon or gave Respondent the belief that it could act on
26 the conduct because the District treated the \$8,086.44 as special/creditable compensation by
27 taking deductions for CalPERS and including this information in Respondent’s pay stubs, Mr.
28

1 Harchegani was ignorant that there was an issue with the pay's classification, and he retired with
2 the belief that the \$8,086.44 would count to his retirement. See Evid. C. §623 and *Crumpler*.

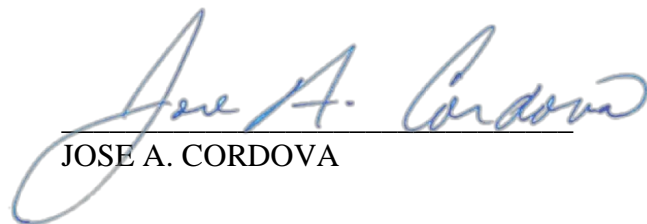
3
4 The public policy argument the Proposed Decision makes is even less convincing. *Blaser*
5 *v. California State Teachers Retirement System* (2022) 302 Cal.Rptr.3d 428 and its disagreement
6 with *Crumpler* is not applicable. The Proposed Decision does not substantively explain why
7 CalPERS would be violating a law or statute by allowing the compensation to be creditable
8 because there has been no full determination that the \$8,086.44 is not special compensation that
9 qualifies as creditable under PERL. Lastly, as set forth in *Crumpler . Board of Administration*,
10 CalPERS has the authority to make changes to Mr. Harchegani's compensation. See *Crumpler*,
11 *supra*, 32 Cal.App. 3d. at 584, citing, among other authorities, Gov. C. § 20124 ["The board shall
12 adjust the payment of benefits payable pursuant to this part, as necessary, in order to maximize
13 the benefits available to members who are subject to the limits of Section 415 of Title 26 of the
14 United States Code. Those adjustments shall include, but are not limited to, cost-of-living
15 adjustments, cost-of-living banks, temporary annuities, survivor continuance benefits, or any
16 combinations thereof."]. Further, contrary to the Proposed Decision's assertions, the
17 compensation at issue is limited to four months' worth of additional pay, and there is a limited,
18 albeit unknown, number of persons affected by the issue.

19 **IV. CONCLUSION**

20 For the foregoing reasons, the Board should not approve the Proposed Statement of
21 Decision, should conduct its own analysis and findings to determine if Mr. Harchegani is entitled
22 to the benefit he retired believing was his.

23
24 DATED: March 24, 2023

LAW OFFICE OF JOSE A. CORDOVA

25
26
27 
28 JOSE A. CORDOVA

1 **PROOF OF SERVICE**

2 The undersigned hereby declares: I am over the age of 18 years and not a party to or
3 interested in the within entitled cause. My business address is 1 Sansome St., Suite 3500, San
4 Francisco, California 94104. On the date set for the below, I served a true copy of:
RESPONDENT’S ARGUMENT AGAINST PROPOSED STATEMENT OF DECISION
5 on all parties to this action, OAH Case No.: 2022070285, as follows:

6 Board Services Unit Coordinator
7 California Public Employees Retirement
8 System
9 Post Office Box 942701
10 Sacramento, CA 94229-2701
11 Email: Board@CalPERS.ca.gov

Alicia Rolfe
c/o: Andra M. Greene, General Counsel
San Diego Unified School District
4100 Normal St., Room 2148
San Diego, CA 92103

12 BY ELECTRONIC TRANSMISSION

13 I caused said document to be sent by electronic
14 transmission to the e-mail address listed above.

15 BY FIRST CLASS MAIL]

16 I am readily familiar with my employer’s
17 practice for collecting and processing
18 documents for mailing with the United States
19 Postal Service. On the date listed herein,
20 following ordinary business practice, I served
21 the within document at my place of business,
22 by placing a true copy thereof, enclosed in a
23 sealed envelope, with postage thereon fully
24 prepaid, addressed as set forth above, for
25 collection and mailing with the United States
26 Postal Service, where it would be deposited
27 with the United States Postal Service that same
28 day in the ordinary course of business.

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with the United States Postal Service that same
day in the ordinary course of business.

23 I declare under penalty of perjury under the laws of the State of California that the
24 foregoing is true and correct and that this declaration was executed on March 24, 2023,
25 at San Francisco, California.

26 
27 _____
28 JOSE A. CORDOVA

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11 **STATE OF CALIFORNIA**

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13 In the Matter of the Appeal Regarding Final) CASE NO. 2022-0414
14 Compensation Calculation of) OAH NO. 2022070285
15 HODI HARCHEGANI,)
16 Respondent,) NOTICE OF ERRATA TO RESPONDENT'S
17) ARGUMENT AGAINST PROPOSED
18 and) STATEMENT OF DECISION
19) Hearing Date: April 18, 2023
20 SAN DIEGO UNIFIED SCHOOL DISTRICT)
21 Respondent.)
22
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28

1 PLEASE TAKE NOTICE THAT Respondent Hodi Harchegani’s Argument Against Proposed
2 Statement of Decision contain the errors set forth below.
3

4 **I. Respondent Hodi Harchegani Retired At The End Of The Year 2021, Not**
5 **2020**

6 Page 2, lines 8-10 contain a typographical error that states that Mr. Harchegani retired at
7 the end of 2020. This statement is incorrect due to the error. Mr. Harchegani retired at the end
8 of 2021. The sentence at issue should read as follows: “The Proposed Decision uses these facts
9 to assert that CalPERS did not learn of the allegedly misclassified \$8,086.44 until after Mr.
10 Harchegani retired in December 31, 2021.”
11

12 **II. Mr. Harchegani Started Communicating His Intent To Retire To CalPERS**
13 **In Or About September 2021, And Not September 2020 As His Argument**
14 **Incorrectly Indicates**

15 Page 2, lines 10 – 12 should read as follows: “However CalPERS own internal
16 documents, which are part of the record, reflect that CalPERS knew of the alleged error as early
17 as September 15, 2021, which is right around the time that Mr. Harchegani communicated his
18 intent to retire to CalPERS.”
19

20 **III. CalPERS Knew About The Issue Regarding The Classification of Mr.**
21 **Harchegani’s Additional Pay Since At Least September 15, 2021, And Not**
22 **September 15, 2020**

23 Page 5, lines 18-20 should read: “However, as set forth in preceding paragraphs, the
24 record contains evidence establishing that CalPERS knew of the problem much sooner—since at
25 least September 15, 2021.”
26

27 DATED: March 27, 2023

LAW OFFICE OF JOSE A. CORDOVA

28 
JOSE A. CORDOVA

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DECISION** in OAH Case No.: 2022070285, as follows:

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9 Post Office Box 942701
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Alicia Rolfe
c/o: Andra M. Greene, General Counsel
San Diego Unified School District
4100 Normal St., Room 2148
San Diego, CA 92103

BY FIRST CLASS MAIL

I am readily familiar with my employer’s
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following ordinary business practice, I served
the within document at my place of business,
by placing a true copy thereof, enclosed in a
sealed envelope, with postage thereon fully
prepaid, addressed as set forth above, for
collection and mailing with the United States
Postal Service, where it would be deposited
with the United States Postal Service that same
day in the ordinary course of business.

15
16
17
18
19 I declare under penalty of perjury under the laws of the State of California that the
20 foregoing is true and correct and that this declaration was executed on March 27, 2023,
at San Francisco, California.

21 
22 JOSE A. CORDOVA