

**ATTACHMENT C**  
**RESPONDENT(S) ARGUMENT(S)**

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OUR FILE NUMBER:  
005953.03811  
10807943.2

November 30, 2012

VIA FAX AND 1ST CLASS MAIL

Cheree Swedensky, Assistant to the Board  
CaPERS Executive Office  
P.O. Box 942701  
Sacramento, CA 94229-2701



Re: In the Matter of the Calculation of Final Compensation  
of LLOYD D. KUHN, Respondent, and SANGER UNIFIED  
SCHOOL DISTRICT, Case No. 9398

RESPONDENT'S ARGUMENT

To the California Public Employee Retirement Board ("PERB"):

Respondent's argument herein is focused on Factual Finding number 8, which involves Mr. Kuhn's request that the subject case remain in abeyance or, similarly, that the Administrative Law Judge (or PERB itself) retain jurisdiction over the matter, so that Mr. Kuhn has the opportunity to resolve his salary claim against the Sanger Unified School District ("District").

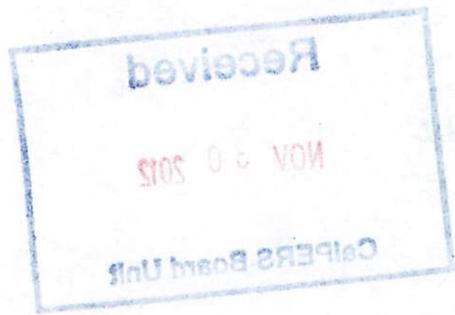
Specifically, as the Board may gather from the Proposed Decision, one of the issues litigated at the hearing on August 2, 2012, is whether Mr. Kuhn would be entitled to have an element of his 2006-2009 contract salary, namely the so-called "step and column" increase, considered in the calculation of his Final Compensation.

CalPERS presented witness testimony at the hearing to the effect that the District had not paid Mr. Kuhn that element of the contract in his last year of employment, the 2007-2008 school year. However, CalPERS's witness (a District payroll technician) stated that she was simply instructed not to pay this portion of Mr. Kuhn's contract by her supervisor, and was unable to confirm that the District's Governing Board had ever authorized the suspension of that contract provision. Mr. Kuhn, however, testified to a certainty that he was never consulted about, or gave his consent to, a suspension of that part of his base salary.

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NOVEMBER 30, 2012

VIA FAX AND 1ST CLASS MAIL

Calpers Board Unit  
1000 Broadway  
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IN THE MATTER OF THE ELECTION OF THE BOARD OF CALPERS  
OF CALIFORNIA  
SCHOOL DISTRICT, Case No. 12345

RESPONSE TO ALLEGATIONS

The Board of Calpers is pleased to receive the letter from the School District dated 11/20/12 regarding the alleged conflict of interest of the Board member, Mr. [Name]. The Board has reviewed the letter and the information provided and has determined that there is no conflict of interest.

Specifically, as the Board may recall, the alleged conflict of interest was identified in the letter on August 1, 2012, wherein Mr. [Name] was alleged to have a financial interest in a company that provides services to Calpers. The Board has reviewed the financial statements of the company and has determined that there is no conflict of interest.

Calpers is a public pension fund and is not a for-profit organization. The Board of Calpers is composed of members who are appointed by the Governor of California. The Board's primary responsibility is to ensure the long-term solvency of the pension fund. The Board has a duty to act in the best interests of the pensioners and to ensure that the pension fund is properly managed.

## ATKINSON, ANDELSON, LOYA, RUUD &amp; ROMO

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In any event, as these facts developed it seemed prudent to request of Administrative Law Judge Sarli to retain jurisdiction over the matter or hold the decision in abeyance, until such time as Mr. Kuhn could resolve his claim against the District for its failure to pay the "step and column" component of his salary. Respondent made this request during the August 2, 2012 hearing itself (Hearing Transcript, Pages 10-12) and, as noted by Judge Sarli, in Respondent's closing brief.

After due consideration of the merits and practicability of pursuing his contract claim against the District Mr. Kuhn filed a Government Claims Act claim with the District on October 3, 2012. And, contrary to Factual Finding number 8, Mr. Kuhn's claim filing with the District occurred only two months after the hearing, not four months.

Further, and more directed to the Proposed Decision, the basis on which Judge Sarli determined that Mr. Kuhn's request was "not timely" is not at all clear. The issue of the "step and column" salary increase was presented and litigated at the August 2, 2012 hearing and, again, that is when Respondent introduced the request to Judge Sarli. And, as noted before, the request was restated in Respondent's closing brief. Thus, the request was essentially made twice, both times well before the matter had been submitted for decision. It is difficult, therefore, to understand how there can be an "untimeliness" issue.

Indeed, Judge Sarli's Finding is ambiguous as to what exactly she believes is untimely (i.e., is she talking about Mr. Kuhn's Government Claim or the request to hold the case open?) and, moreover, cites no authority supporting her determination. In fact, in view of her finding that she has no jurisdiction to render a decision on Mr. Kuhn's contract claim she similarly cannot base an untimeliness finding in this case on the date of his claim filing. In other words, Judge Sarli fails to explain how the timing of Mr. Kuhn's contract claim filing with the District could prejudicially impact a re-calculation of his benefits.

Rather, in civil matters an issue, or speaking motion if you will, is generally not untimely, if it is presented before the case is submitted for decision and, in any event, reserving jurisdiction prior to the time the agency renders a final decision is not inconsistent with general administrative procedures. (See Government Code section 11521; Holden v. Los Angeles City Ethics Commission (2006) 137 CA4th 1274, 1280; and Western Radio Service Co. v. Glickman (9th Cir. 1997) 123 F.3d 1189)

Therefore, it is Respondent's position that Factual Finding number 8 in the Proposed Decision must be stricken. Instead, Mr. Kuhn's request should be considered to have been presented at a proper time and in the proper context, and thus deemed a valid, relevant request (or motion) under the unique circumstances of Mr. Kuhn's case.

By providing Mr. Kuhn an opportunity to resolve his contract claim with the District, this Board will be advancing the interests of justice and the mission of the California Public Employee

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California Public Employee Retirement Board

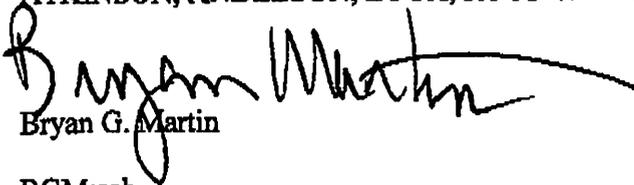
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Retirement Law, which is to properly and fairly determine the a member's rightful retirement benefits.

Very truly yours,

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

A handwritten signature in black ink, appearing to read "Bryan G. Martin", with a long horizontal flourish extending to the right.

Bryan G. Martin

BGM:sah

cc: Lloyd Kuhn

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**FAX TRANSMITTAL COVER SHEET**

**OUR FILE NUMBER:**

**November 30, 2012**

<u>TO</u>	<u>COMPANY</u>	<u>FAX #</u>	<u>PHONE</u>
Cheree Swedensky, Assistant to the Board	CalPERS Executive Office	(916) 795-3972	

**FROM** Sandra A. Huizar, Legal Secretary

**RE** Lloyd Kuhn and Sanger Unified School District  
Case No. 9398

**MESSAGE** Attached please find Respondent's Argument for the above-referenced case.  
Thank you.

ORIGINAL WILL FOLLOW BY MAIL: Yes

NUMBER OF PAGES (including this sheet) 4

If you do not receive the correct number of pages,  
please contact Sandra A. Huizar at 559.225.6700.