

**ATTACHMENT C**

**RESPONDENT'S ARGUMENT REGARDING THE  
PETITION FOR RECONSIDERATION**

**Michael Campbell**

February 4, 2013

Cheree Swedensky, Assistant to the Board  
CalPERS Executive Office  
Post Office Box 942701  
Sacramento, California 94229-2701

**Respondent's Argument**

**Subject:** In the Matter of the Appeal of the Removal of Service Credits of  
MICHAEL T. CAMPBELL, Respondent, and CITY OF LANCASTER,  
Respondent

Dear Ms. Swedensky:

I would like to thank you for the extension and the Stay of Execution.

I would like to start with the removal of .736 of service credit. According to your CTP report on 5 May 2006, Jenny Bolanos from your Service Credit Division sent a prior service letter to me regarding the .736 service credit being posted to my account. The addition of that time was verified when I went into the CalPERS Pasadena office in May 2007. CalPERS discovered the mistake of that posting over three years after I was notified it had been posted. I received a letter dated 12 September 2011 from Justin Garrett in the Retirement Account Services Section-Customer Account Services Division stating an error had been found 2 July 2009. I was finally being notified twenty-seven months after the error had been discovered and I retired.

This case was filed by the CalPERS Legal Department based on an assumption that I wanted additional service credit time added to my account and to be reimbursed for that time monthly. They were fully aware of previous statutory and decisional law, which would favor their rights to deny me unjust enrichment. As I stated in my hearing I did not feel adding time I did not work to my account was fair or reasonable. It would be unfair to the citizens of the City of Lancaster to put an unfunded burden on them as well. However, due to the promise made to me by CalPERS employees, I feel there is a contract violation. I retired my position based on facts and figures supplied to me by several CalPERS employees. In speaking with Julie Parra, in the Benefit Services Division on 29 December 2011, I said, "I know I am special but does this happen to everyone or just me?" She laughingly told me "this happens often".

My request was not for an estimate (Attachment A), but for actual time served. I received, in writing, a statement dated 30 April 2009 (Attachment B) giving me my "Current Balance" and amount of "Service Credit Time". Nowhere on the statement does it say "estimate", I took it at face value, I had asked for actual time credited I believed that was what I received.

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I wasn't told once but six different times (Attachment C) I had over thirty-nine years. As I was uncertain how service credit time was calculated I relied on the figures provided by CalPERS, entered into a contract with the City, and retired based upon those figures. Two weeks before I retired, but over four weeks after I submitted my resignation I received paperwork stating I had three plus years less than what was on the statement I received dated 30 April 2009, which reduced my monthly stipend by over \$700. I spoke with the City Manager regarding this situation and asked him for reinstatement of my position with the City of Lancaster. He explained the budget had been finalized and there was no funding for my position. The lack of the three plus years negated the incentive that was offered by my employer and has caused financial hardship for my wife and myself.

In the past I have had dealings with CalPERS. Prior to my retirement issue I had the opportunity to experience the CalPERS attitude of "our way or the highway". Briefly, I supplied CalPERS with a notarized statement from my ex-wife stating she waived all rights to any and all future "support or monetary enhancements from myself or my estate" which we had both agreed included my retirement. CalPERS response was "it is not on our form", "It is not our language" so therefore they would not accept the legal document I presented. Furthermore, I was informed I would not receive a penny from my retirement until I complied with all their requests and filled out all the paperwork in their language on their forms. This prompted me to request, in writing, on their letterhead, their statement of service credit so I made no mistakes on the issue and processing of my retirement papers and final compensation.

I did not make the mistakes, CalPERS did. If this were a matter solely driven by the equities of the situation then I would win. There was a promise (Attachment B), I relied upon that promise and signed a contract to retire, a promise that was rescinded-not honored. That promise being withdrawn resulted in financial hardship. The doctrine of promissory estoppel encourages fair dealing in business relationships and discourages conduct that unreasonably causes foreseeable economic loss because of action or inaction induced by a specific promise.

This is an issue of violation of contract law that is covered by your insurance, whether you are self-insured or otherwise insured. The City of Lancaster did not indemnify CalPERS for errors and omissions created by their staff. Again, I am not asking for additional service credit time, but for breach of contract. CalPERS' attorneys have estimated my loss of income to be in excess of \$750 a month. Based on my future life expectancy of thirty years plus this equates in excess of \$300,000. To date we have had to take approximately \$24,000 plus out of savings just to cover medical expenses we were not anticipating due to their breach of contract.

As I stated in my hearing I feel CalPERS breached both a written and verbal contract and should rely on their liability insurance to cover the damages. The way CalPERS filed this case it appears that I was trying to rewrite laws and defy strong public policy, which is not the situation. As demonstrated in Attachment B, CalPERS was given clear direction as to what was being requested, the reasons for the request, and the action that would occur upon my receipt and acceptance of that information. By responding in writing, on their letterhead, in a timely manner, complying with my requests they formally agreed and

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understood my intention of the agreement. By my signing the contract with the City of Lancaster demonstrated my acceptance of the agreement between CalPERS and myself. A reasonable person should have known that if I deemed the CalPERS statement was acceptable and confirmed all previous verbal service credit time given to me, I would sign the contract with the city. This case is clearly breach of contract by CalPERS employees. I feel CalPERS filed this case in a way that may be technically legal and enforceable by an obscure law that protects public entities allowing them to continue their poor practice of managing members accounts and making arbitrary decisions, but is morally and ethically unjust.

It is my opinion the CalPERS Board should take appropriate action to eliminate future discrepancies in the accountability and accuracy of members' accounts. This is a practice of which CalPERS staff is obviously aware and the procedure is in dire need of restructuring. This is further evidenced by the high volume of legal cases and verified through comments by CalPERS staff; both current and prior staff members.

During my research efforts I discovered that in at least two years (1988 and 1989) CalPERS employees were encouraged to reach financial settlements with members who had fallen victim to CalPERS employees errors and omissions. I am not sure if that violated the "strong public policy" or legislative statutes, but it certainly appears to be a morally and ethically correct practice. I only bring up this example because I know it is outside of the statute of limitations for retaliation. As with a current court decision where a California woman was brutally raped, her attacker was convicted, then freed from jail due to an obscure law many people did not know existed. If the victim had been married during the crime the attacker would have remained incarcerated and served his entire sentence. However, because the way the case was presented and the victim was single, the judges' hands were tied and the convicted rapist was deemed not guilty.

I think there is now a heightened interest in the current legislation and public policy to make needed corrections in how CalPERS performs their duties and obligations in accurately recording, calculating, and disseminating members' information. I am hopeful that my continued actions through the judicial system and diligently working with my State Senator, a positive resolution for all members will be the final outcome.

Respectfully,



Michael Campbell

cc Senator Steve Knight

Attachments 3

**ATTACHMENT A**

4-28-09

Member Services Division :

My name is Michael T. Campbell and I am requesting a statement of my full credit service time with PERS. Would you please send me your calculations of my total number of service years that my retirement will be based on. I currently work for the City of Lancaster and they are offering an incentive if I elect to retire prior to June 30, 2009. However I must give them an answer prior to May 8, 2009. Please send me a written statement on your letterhead with my total years of service credit time that my retirement will be calculated from. I have checked on line, however the years do not match my records. When I have called your agent provided me with a much different number.

The last four number of my ss# are

Work phone -----

Home phone

Cell phone

Work E-Mail

Home E-mail

If you are going to FAX please call prior, I will supply a FAX number at that time

Thank you for your cooperation on resolving this urgent matter.



Michael T. Campbell

**ATTACHMENT B**



**Member Services Division**  
P.O. Box 942704  
Sacramento, CA 94229-2704  
888 CalPERS (or 888-225-7377)  
TDD: (916) 795-3240  
Interpreting Services (Deaf): (916) 795-4120

April 30, 2009

Michael T Campbell

Dear Michael T Campbell

This is in response to your request on 04/30/2009 regarding your account with the California Public Employees' Retirement System (CalPERS).

Your account balances are the following:

Current Balance:	Years of Service Credit:
<b>\$313,250.41</b>	<b>39.107</b>

Your balances are based on payroll reported by your employer. The interest credited to your account was computed at the annual interest crediting rate of 6%.

You do not have personal access to these contributions. Your account contributions cannot be loaned or borrowed under any circumstances. Per Government Code 20731, you cannot refund or rollover your contributions unless you permanently separate from all CalPERS covered employment.

If you have additional questions, please contact us at the above toll free number, or visit our web site at [www.calpers.ca.gov](http://www.calpers.ca.gov).

Sincerely,  
CalPERS Member Services Division

## **ATTACHMENT C**

### **Timeline**

#### **Service Credit Timeline**

**4/22/09**      **39.42 - CTP Report**  
**Taj Lawrence (HR)**  
**Actuarial & Employer Svs**

**4/28/09**      **39.474 - CTP Report**  
**Call from City of Lancaster Human Resources**  
**Dominic Trillo (HR)**  
**Actuarial & Employer Svs**

**39.474**  
**Call from Michael Campbell**  
**Robert Borrelli Jr. (Mbr)**  
**Customer Service**

**4/30/09**      **39.107**  
**Letter From CalPers**  
**Member Services**

**5/15/09**      **39.107**  
**Member met with CalPers rep. to sign**  
**retirement papers-rep. told member &**  
**wife member had more sc time than in letter**  
**as city did not report time until end of April.**  
**Mario Baluyot**  
**Field Services**

**5/18/09**      **39.52 - CTP Report**  
**Call to Michael Campbell from**  
**Mario Baluyot**  
**Field Service**

**6/12/09**      **36.519**  
**Letter From CalPers**  
**Member Services**

**FEBRUARY 4, 2013**

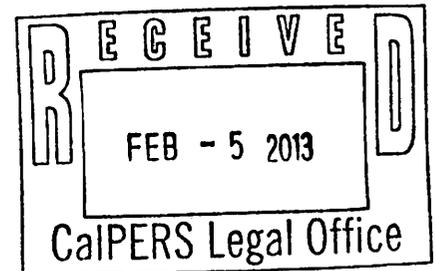
**TO: PETER M. MIXON  
GENERAL COUNCIL**

**FROM: MICHAEL CAMPBELL**

**SUBJECT: RESPONDENT'S ARGUMENT**

**FAX #: 916-795-3659**

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**WILL FOLLOW UP THIS FAX WITH HARD COPY IN THE MAIL**