

**ATTACHMENT C**  
**RESPONDENTS' ARGUMENTS**



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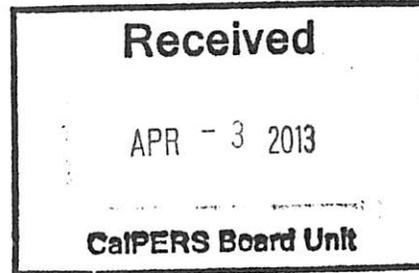
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March 28, 2013

**VIA FACSIMILE (916) 795-3972 and US MAIL**

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



**Re: In the Matter of the Final Calculation of the Final Compensation of Pier'Angela Spaccia/ Agency Case No. 2011-0789/ RESPONDENT CITY OF BELL'S ARGUMENT**

Dear Ms. Swedensky:

Pursuant to Barbara Moseman's February 28, 2013 letter in the above-referenced matter, Respondent CITY OF BELL (hereafter "Bell" or "City") submits argument to the Board regarding Proposed Decision OAH 2012020198, which is scheduled to be considered by the CalPERS Board on April 17, 2013.

**SUMMARY**

The City does *not dispute* and, in fact supports, the conclusion in the Proposed Decision that Ms. Spaccia's compensation pursuant to her July 2003 employment contract with the City should be deemed her "final compensation" for purposes of determining her retirement benefits; however, the City *does dispute* the conclusion that Ms. Spaccia is entitled to the five years of "air time" purchased on her behalf by the City of Bell. The analysis in the Proposed Decision on the "air time" issue is legally incorrect because (1) the City did not approve the payment of "air time" to Ms. Spaccia, (2) the receipt of City-paid "air time" was not a condition of Ms. Spaccia's employment contract with the City, (3) the law does not allow an *employer* to pay for "air time" of an *employee*, (4) the City's purchase of "air time" for Ms. Spaccia violates the California Constitution in that it is an illegal gift of public funds, and (5) CalPERS is not estopped from denying Ms. Spaccia the benefits of the City-purchased "air time." Accordingly, the Board should *reverse* the Proposed Decision's conclusion as to "air time."

Further, after reversing the Proposed Decision as to "air time," the Board should adopt a Final Decision as *precedential* because there are currently ten (10) more pending appeals by current and former Bell elected officials and employees where CalPERS' denial of the unauthorized purchase of "air time" by the City is directly at issue.

## **ARGUMENT**

### **A. The Purchase Of Ms. Spaccia's "Air Time" Was Neither Authorized By The City Nor A Benefit Under Ms. Spaccia's Employment Agreement**

The Proposed Decision addresses the Additional Retirement Service Credit ("air time") issue at pages 18-20; however, nowhere in such discussion is there any *mention*, let alone consideration, of the fact that the City did not authorize the purchase of "air time" for Ms. Spaccia. Simply put, Ms. Spaccia, who was the City's Finance Director at the time, drafted a check made out to CalPERS for \$71,085.39 to be drawn from City funds and mailed it off to CalPERS to receive her five years of air time.

Spaccia has the burden of proof to show, by a preponderance of the evidence, that she is entitled to the City-purchased "air time." Evidence Code sections 500 and 550; *Greator v. Board of Administration* (1979) 91 Cal.App.3d 54, 57. As such, Spaccia must show that the Bell City Council approved the \$71,085.39 expenditure for Spaccia's "air time." She has not done so, and cannot do so. Nowhere in the record before this Board is there a City Council agenda where the purchase of Ms. Spaccia's "air time" by the City was to be considered by the City Council; nowhere in the record is there any minutes of City Council meetings showing that a \$71,085.39 "air time" expenditure had been approved; and, nowhere in Ms. Spaccia's 2003-04 or 2004-05 employment agreement is there any requirement for the City to purchase five years of "air time" for Ms. Spaccia. So not only does Ms. Spaccia fail to show her entitlement to the "air time" by a preponderance of the evidence, she did not even produce a scintilla of evidence in support of such claim. Accordingly, Ms. Spaccia is not entitled to keep the "air time" that the City "purchased" for her, and CalPERS is required by law to return the \$71,085.39 to the City. *People v. Robert Rizzo et al.* (2d Dist., March 20, 2013) B236246 ["...the recipient of funds under the void ordinance or contract may be liable to the City in restitution..."].<sup>1</sup>

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<sup>1</sup> In fact, What Ms. Spaccia did, may well have constituted a crime. Penal Code section 424 states (in relevant part):

424. (a) Each officer of this state, or of any county, city, town, or district of this state, and every other person charged with the receipt, safekeeping, transfer, or disbursement of public moneys, who either:

1. Without authority of law, appropriates the same, or any portion thereof, to his or her own use, or to the use of another...

Is punishable by imprisonment in the state prison for two, three, or four years, and is disqualified from holding any office in this state.

Courts interpreting section 424 have given it broad application. *Any* use of public funds not authorized by law constitutes a violation of section 424. *People v. Battin* (1978) 77 Cal.App.3d 635, 657. Actual possession of the public funds is also unnecessary, so long as the person has some degree of control over the disbursement of public funds. *People v. Groat* (1993) 19 Cal.App.4th 1228, 1232. The victim's remedy for violation of Section 424 is restitution. *Penal Code* section 1202.4

Of course it is not for this Board to determine whether Ms. Spaccia committed a crime. Penal Code section 424 is noted only to show that Ms. Spaccia's failure to produce evidence showing that the City authorized the purchase of her "air time" was *not* an oversight, but that

**B. Employers Are Prohibited From Purchasing “Air Time” For Employees**

The Proposed Decision, at pages 19-20, concludes that there is nothing prohibiting “an employer from making the [“air time”] contribution on the employee’s behalf...[n]or was any legislative history related to the enactment of Government Code 20909 [which authorizes the purchase of “air time”] offered to support CalPERS’ assertion.” In response, the City submits that the Proposed Decision is legally erroneous because the statute on its face states that “members” must make the contributions and substantial---in fact overwhelming---legislative history was indeed proffered by CalPERS in support of the position that employers cannot purchase “air time” on behalf of employees. *See* CalPERS’ Closing Argument, pages 14-15 and supporting Exhibits.

The general rule in statutory construction is to give statutes their “plain meaning” if it is clear. In this case, it is clear that “member” means a “member of CalPERS.” If the Legislature meant “member, or employer on behalf of the member” it would have said so.

The legislative history of Government Code section 20909 supports the “members only” interpretation. The Concurrence In Senate Amendments for AB 719 states that:

“According to CalPERS, this benefit is intended to be cost neutral to employers. The member pays the full present value cost of the additional service credit.”

As such, it appears that an employer may facilitate an employee’s purchase of “air time” (e.g. through a member’s payroll deductions or “cut the check”), but may not bear any of the financial burden, for otherwise the purchase of “air time” would not be cost neutral to employers.

Further, the Concurrence in Senate Amendments for AB 719 notes that there are “two ways for paying for the increase in retirement benefit that results from the crediting of the additional service credit” One is the method where the employer and employee pay for the credit. “This method most commonly applies when the employer directly benefitted from the service being performed.” The other type of payment is the “full present value” payment, where the member pays the full cost of the increase in benefit. “This cost method generally applies when an employer does not directly benefit from the member’s service...”

Here, CalPERS has determined that an “air time” purchase is to be via the “full present value” method. *See* Exhibit 26D. Presumably this is because “air time” purchases are to be cost neutral to the employer and because (as set forth in more detail below) “air time,” by

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Ms. Spaccia had strong motivation to produce such evidence at her hearing *if she was able to do so*. She was not able to do so, not then, not now, and not in the future because no such evidence exists. As such, a remand to determine this issue would be not only be fruitless, but also unfair to the City, which would be required to further expend resources in defending against Ms. Spaccia’s proverbial “second bite at the apple.”

definition, “does not correspond to any service actually performed.” By rejecting the method by which the employer and employee pay for the credit in favor of the “full present value” method, CalPERS has impliedly determined that employers cannot purchase the “air time.”

In sum, the only way to interpret Government Code section 20909 consistent with its legislative history is to allow employers to facilitate a *member’s* purchase of “air time,” but not to purchase the “air time” for the member itself. Application of such interpretation to the instant matter makes clear that the City’s purchase of Ms. Spaccia’s “air time” must be disallowed because it is undisputed that such purchase was *not* cost-neutral to the City of Bell.

**C. The “Air Time” Purchased By The City Was An Unconstitutional Gift Of Public Funds**

Article XVI, section 6 of the California Constitution prohibits a city from making a gift of public funds. Pursuant to this provision, it is well-settled that when an employee’s compensation is fixed, and the services already performed, it is unlawful for a city to make a gift to such employee or raise his/her salary retroactively. *Robinson v. Dunn* (1888) 77 Cal. 473; *Lamb v. County Peace Officers Retirement Comm.* (1938) 20 Cal.App.2d 348.

As set forth above, Ms. Spaccia served the City via an employment agreement that contained no provision that she be compensated, in whole or in part, with “air time.” Thus, even assuming, *arguendo*, that the City somehow authorized the purchase of “air time” on Ms. Spaccia’s behalf, such purchase would still be illegal because Ms. Spaccia performed no additional services for the City warranting any additional compensation. A “gift” is something of value given without any expectation of receiving something in return. Here, Ms. Spaccia’s “air time” was purchased by the City without an expectation of receiving any additional work in return; hence, the “air time” was a gift, and because it was a gift purchased with public funds, it was unconstitutional.

Lastly, the very definition of “air time” is service credit that “does not correspond to any service actually performed.” (Ex. 26, AB 719 analysis, page 2) All a CalPERS member has to do to purchase “air time” is to pay its present value. *Id.* Accordingly, by definition, “air time” purchased by a city for its employee must be a gift.

In sum, the evidence and definition of “air time” make clear that the City’s purchase of “air time” for Ms. Spaccia was given without consideration; as such, it constituted a constitutionally-prohibited gift of public funds, and such funds must be returned to the City.

**D. CalPERS Is Not Estopped From Denying Ms. Spaccia’s Application For “Air Time”**

The Proposed Decision also concludes, at page 24, that CalPERS is estopped from denying Ms. Spaccia the benefits of the City-purchased “air time.” However, in drawing such conclusion, the Proposed Decision mis-applies the case of *Medina v. Board of Retirement, Los Angeles County Employees Retirement Assn.* (2003) 112 Cal.App.4th 864, 868-869.

*Medina* imposes a five-part test that a plaintiff must prove in order to establish an estoppel against a public entity. Ms. Spaccia proffers no evidence in support of three of these parts; accordingly, her estoppel argument must fail.

First, *Medina* requires that “the party to be estopped [CalPERS] was apprised of the facts” surrounding the City’s purchase of the “air time.” In the case at bar, Ms. Spaccia presents no evidence that CalPERS believed that the City authorized the purchase of the “air time” or that the purchase would not be cost-neutral to the City. Indeed, once CalPERS discovered these missing facts, it quickly rescinded the award of “air time,” which led to the instant appeal.

Second, *Medina* requires that “the party asserting estoppel [Ms. Spaccia] was ignorant of the facts.” Here, Ms. Spaccia testified that she was fully aware of all of the relevant facts---she knew that the City Council did not approve the purchase of “air time” because she was in charge of the Finance Department at the time and prepared the vague, non-descript footnote to the budget amendment that, in passing, mentions “air time,” knowing that just because an item is in the budget approved by the City Council does not mean it is an approved expenditure. Ms. Spaccia requested, approved, and issued the “air time” payment from the City to CalPERS on behalf of herself.

Third, under *Medina*, to estop a governmental entity “in the considered view of a court of equity, the injustice which would result from a failure to uphold an estoppel is of sufficient dimension to justify an effect upon public interest or policy which would result from the raising of an estoppel.” (Simply put, this means that if the harm to Ms. Spaccia in not getting her “air time” outweighs CalPERS’ interest in not awarding it to her, then, assuming all other elements of estoppel are satisfied, the estoppel should stand.) Here, if Ms. Spaccia does not receive her “air time,” she loses nothing because she never purchased it in the first place and it was never provided to her as a benefit under her employment agreements. Conversely, CalPERS has at least two strong interests in not awarding Ms. Spaccia the City-purchased “air time.” First, CalPERS has an interest in upholding the legislative intent that a purchase of “air time” be cost-neutral to the employer. Second, CalPERS has an interest to avoid liability for restitution of City funds paid to CalPERS illegally.

As a result, because Ms. Spaccia must establish all five elements of estoppel in order to estop CalPERS here, and she cannot establish three such elements, her estoppel claim must be rejected.

**E. After Reversing The Proposed Decision As To “Air Time,” The Board Should Adopt A Final Decision As Precedential**

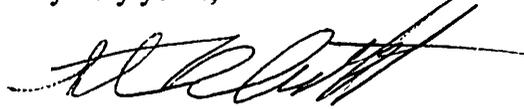
This Board has the option of designating any of its Final Decisions *precedential*, and usually does so if the decision is of major import or resolves an issue likely to arise again. Here, the issue of the legality of City-purchased “air time” is, and in fact has, arisen in at least 10 other cases that are currently on appeal before this Board---with the instant matter being the first one. Accordingly, the City requests that this Board provide guidance to the litigants and administrative law judges in these other cases (and any that are unknown to the City) by reversing the Proposed Decision as to “air time” and designating the Final Decision as precedential.

Cheree Swendensky, Assistant to the Board  
March 28, 2013  
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For all of the foregoing reasons, this Board should **affirm** the Proposed Decision as to Ms. Spaccia's final compensation, **reverse** the Proposed Decision as to "air time," and designate the Final Decision as **precedential**.

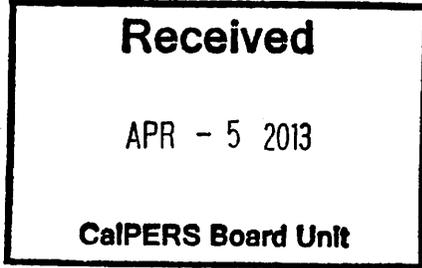
On behalf of the City of Bell, we thank you in advance for your consideration.

Very truly yours,

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

Stephen R. Onstot  
Partner

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PIER' ANGELA SPACCIA



5  
6 BOARD OF ADMINISTRATION  
7 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT TRUST

8 In the Matter of the Calculation of  
9 Final Compensation:

) CASE NO. 2011-0789  
) OAH NO. 2012020198

10 PIER' ANGELA SPACCIA,

11 Respondent,

) RESPONDENT SPACCIA'S ARGUMENT  
) RE: DECISION OF ALJ JAMES AHLER

12 and

13 CITY OF BELL,

14 Respondent.

15  
16 Judge Ahler Asks the Board to Violate its Constitutionally Imposed Fiduciary  
17 Duty to Protect the Pension of Employees Covered by the CalPERS System.

18 This matter arises out of the 2010 scandal at the City of Bell where it was alleged by the  
19 Los Angeles Times that officials got exorbitant salaries. During the investigation, the District  
20 Attorney, who was then running for Attorney General at the time, had 8 people from the City of  
Bell arrested at their homes at 7:00 a.m., as television cameras rolled. Thereafter the District  
Attorney had a news conference where he labeled the City of Bell as corruption on steroids as  
part of his campaign to become Attorney General.

21 All arrestees, including 6 City Council members, were charged with misappropriation of  
22 government funds, conflict of interest, and miscellaneous charges. Angela Spaccia alone  
23 among the 8 had no authority whatsoever to appropriate, or authorize the appropriation of  
24 government funds. As for any conflict of interest, the supplemental retirement plan she set up,  
which was the subject of these counts, did not even cover her at the time because she was an  
outside consultant.

25 Angela Spaccia submitted a polygraph to both the District Attorney and Judge Ahler,  
26 has testified over six times before various forums concerning her employment at the City of  
Bell, and has not taken the Fifth Amendment to one question. Ms. Spaccia believes she has  
been singled out for special treatment even though she is innocent of all the charges.

27 Angela Spaccia went to work for the City of Bell believing that she had legally  
28 authorized employment contracts, and that her salary was covered by the CalPERS system  
because she was given no notice by anyone, including CalPERS or the City of Bell, that her full  
salary was not covered as part of her pension.

1 Angela Spaccia believes that an employee who in good faith works for a city covered by  
2 CalPERS cannot be deprived of her pension because of alleged legal defects beyond her  
control.

3 Judge Ahler held that an employee who in good faith works at a municipality covered  
4 by the CalPERS system, and believes without question that they are enrolled in the CalPERS  
5 system, can be deprived of her pension because the city for which she was employed did not  
6 comply with some CalPERS regulations, or the city attorneys who approved her employment  
7 contracts overlooked some legal defects.

8 Judge Ahler's decision is based on two faulty conclusions; (1) that Robert Rizzo did not  
9 have authority to employ Angela Spaccia, and (2) that Angela Spaccia's employment agreement  
10 was not publicly available as required by Government Code § 20636(b)(1).

11 As Ms. Spaccia will demonstrate, Judge Ahler is completely wrong with respect to both  
12 of these conclusions. His conclusion not only ignores the history of the Resolution 2006-42, it  
13 also fails to even recognize the moral outrage of a long-time government employee losing her  
14 pension because the city who employed her did not properly comply with a technical  
15 requirement of the City Charter.

16 There is a particular irony in the fact that the City of Bell's attorneys wrote Resolution  
17 2006-42, and that the CalPERS system not only wrote the statutes to be applied, propounded all  
18 the government regulations, audited the City for CalPERS compliance, and never raised any of  
19 these issues. Now both the City of Bell and CalPERS are trying to deprive Angela Spaccia of  
20 her pension based on conduct by CalPERS and the City of Bell. Yet, no one claims that Angela  
21 Spaccia was in any way responsible for these alleged technical defects.

#### 22 **Every Employee Covered by Calpers Should Be Told Their Pensions Are at Risk**

23 Were the CalPERS Board to adopt this philosophy implicit in the proposed decision, it  
24 must announce to every employee in the State of California covered by the CalPERS retirement  
25 system, that each of them is responsible for the failure of their municipalities to implement all  
26 the technical requirements of the CalPERS system, as well as all legal requirements necessary  
27 for their employment agreement. Employees who work for years in good faith could be  
28 stripped of their pensions for technical errors over which they had no control.

#### 29 **Judge Ahler Was Incorrect When He Found That City Council 30 Resolution 2006-42 Did Not Delegate Hiring Authority to CAO Rizzo.**

31 The lynchpin of Judge Ahler's decision is contained in paragraph 17 and 18, where he  
32 concludes that Robert Rizzo did not have authority under Resolution 2006-42 to sign Angela  
33 Spaccia's City of Bell employment agreements.

34 Judge Ahler cleverly leaves out of his opinion two important documents. First, he does  
35 not include Resolution 2006-42 because to do so would put the lie to his conclusion. Any  
36 reading of Resolution 2006-42 shows that the only reasonable interpretation to paragraph 3 is  
37 that it prohibits the CAO from entering into contracts for services rendered by any person  
38 already in the employ of the City of Bell at a regular salary. For the Board's convenience, I  
39 have attached a copy of Resolution 2006-42. To read this Resolution otherwise renders it total  
40 nonsense. Under Judge Ahler's absurd interpretation, the CAO can sign written contracts for  
41 services with new employees, but cannot sign employment contracts for current employees  
42 whether they are gardeners, janitors, or administrative staff.

43 As Angela Spaccia proved at the hearing, Resolution 2006-42 was written by City  
44 Attorney Clifton Albright specifically to delegate the authority under Section 519 of the City of  
45 Bell's Charter. Ms. Spaccia obtained a declaration from Albright which was accepted as

1 administrative hearsay by Judge Ahler. For the convenience of the Board, I have attached a  
2 copy of this two-page declaration. As Albright states in his declaration, paragraph 3 prohibited,  
3 without City Council approval, additional contractual services to be added to persons who were  
4 already employed by the City of Bell.

5 It was not an inadvertent error to leave out the text of Resolution 2006-42, as well as the  
6 declaration of the city attorney who wrote the resolution. It was a clear recognition that Ms.  
7 Spaccia's employment contracts were authorized by a resolution delegating the authority to  
8 CAO. This obvious truth undermines the totality of Ahler's opinion.

9 How can the City of Bell contest Ms. Spaccia's legitimate pension based on its claim of  
10 its own mistake?

11 The moral answer to this question is that an employee should not be deprived of her  
12 legitimate pension because of technical mistakes made by CalPERS and her employer. Nor  
13 should either the City of Bell or CalPERS benefit from their own mistakes.

14 **Angela Spaccia's Employment Agreement Was "Publicly Available"**  
15 **As That Term Was Understood During Her Period of Employment.**

16 According to Judge Ahler, if a citizen went to the City of Bell and asked to see Angela  
17 Spaccia's employment agreement, and the City of Bell instantaneously copied her employment  
18 agreement and gave it to the citizen, this would be insufficient to establish that her employment  
19 agreement was "publicly available."

20 Judge Ahler constructs a totally fictitious historic meaning for the words 'publicly  
21 available' and falsely states that the reference to 'publicly available pay schedule' was added to  
22 Government Code §20636 in 2006. Actually, the words 'publicly available pay schedules'  
23 were in the original legislation in 1993, and a second phrase of 'publicly available' was added  
24 in 2006 to clarify that it applied to both individual employment agreements and to employees  
25 who were members of a class.

26 To buttress Ahler's conclusion that actually 'publicly available' means published rather  
27 than available upon request, Judge Ahler uses California Code of Regulations § 570.5 which  
28 was not even operative when Angela Spaccia retired from the City of Bell.

29 Judge Ahler's decision even overlooks the entire history of CalPERS administration  
30 from 1993 to 2010, and does not refer to a single instruction, memorandum, or audit that ever  
31 interpreted 'publicly available' to mean published. Ms. Spaccia knew her employment  
32 agreement was not posted on the wall of the city hall or available online, but it never occurred  
33 to her, or anyone else before this case, that public availability meant published. At the time of  
34 Ms. Spaccia's retirement, 'publicly available' meant 'available upon request.' In fact the L.A.  
35 Times obtained a copy of Ms. Spaccia's employment agreement within several days of its  
36 request.

37 Surely an employee of the City of Bell who works in good faith for the City of Bell  
38 should not be deprived of her legitimate pension because the City of Bell did not properly  
39 'publish' her contract, and the CalPERS auditors never alerted her during the 2006 audit that  
40 the compliance was deficient.

41 To buttress his conclusion that Ms. Spaccia's employment agreements were not publicly  
42 available, Judge Ahler observed that they were not approved through a public process, or  
43 approved by the City Council. This argument is based on Ahler's initial false conclusion that  
44 Resolution 2006-42 did not delegate the authority to enter into an employment agreement. That  
45 resolution, and in fact the City Charter itself, contemplated employment agreements that were  
46 not run through the public process of a City Council approval, and could be signed by the CAO,

1 and were then publicly available upon request, thereby meeting CalPERS' requirement of  
2 public availability.

3 **The Proposed Decision Fails to Discuss the**  
4 **Appropriate Remedy for the Alleged Defects.**

5 Judge Ahler erroneously found that Resolution 2006-42 failed to give the CAO the  
6 authority to sign an employment agreement with Angela Spaccia. The question should then  
7 have been asked: What is the appropriate remedy for an oversight by the city attorney?

8 Judge Ahler interpreted the words 'publicly available,' which have existed in  
9 Government Code § 20636 since at least 1993, to mean published on the internet or posted on  
10 the wall of the city hall as Regulation 570.5 required as of August 10, 2011. Should an  
11 employee who in good faith worked for the City of Bell be deprived of her pension because of  
12 the retroactive application of this regulation?

13 Not only did Judge Ahler totally fail to consider the appropriate remedy for the technical  
14 defects he erroneously found, he overlooked the fact that Regulation 570.5 specifically allows  
15 for the protection of the innocent employee.

16 Regulation 570.5(b) states: "Whenever an employer fails to meet the requirements of  
17 Subdivision (a) above, the Board, in its sole discretion, may determine an amount that will be  
18 considered to be pay rate, taking into consideration all the information it deems relevant  
19 including, but not limited to, the following . . ."

20 Although the subsection states the Board "in its sole discretion" has the power to award  
21 a pension, this delegation in our legal system never amounts to the delegation of unchecked  
22 power. This section must be interpreted to mean that the Board has rational reasons to excuse  
23 an employee from suffering because of her employer's failure to meet the new requirements.  
24 This is such a case.

25 There is no evidence that Ms. Spaccia was in any way responsible for or had notice of  
26 any failure to make her employment agreement 'publicly available.' The very recent  
27 implementation of Regulation 570.5 shows there had been at least massive ambiguity in the  
28 implementation of the requirement by employers. Judge Ahler specifically quotes from the  
explanation that CalPERS attached to proposed Regulation 570.5 which states that employers  
have not uniformly adhered to the requirements.

The California Code of Regulations Section 570.5(b) specifically requires the Board to  
make a determination of the amount of pay rate to be allowed where an employer fails to meet  
the requirements that the employment agreement is publicly available. Judge Ahler made no  
recommendation nor did he consider the various factors that the Board should use in making  
that determination. In this respect, the proposed opinion is a complete failure.

23 **An Employee Does Not Have to Be a Member of a**  
24 **Class or Group to Qualify for a CalPERS Pension.**

25 Judge Ahler attempts to disqualify Angela Spaccia because he claims that she was not a  
26 member of a class or group of other employees, and criticizes her pay increases because they  
27 were not in lockstep with other members of the "class." Government Code Section 20636  
28 specifically provides for a pay rate for a member who is "not in a group or class," which has  
been in the statute since 1993. In reality, Government Code Section 20636 attempts to define  
what pay rate means to exclude additional amounts such as overtime, etc., which would not be  
considered part of the basic pay rate for government employees.

1 What is bizarre about the CalPERS attempts to re-interpret Government Code Section  
 2 20636, and Regulation 570.5 is that it is CalPERS which drew up these sections, knows the  
 3 legislative history, and should be fully armed with legislative history, memorandums, prior  
 4 audits, and instructional materials which would support their position. There are no such  
 5 materials because no one before the Bell scandal ever attempted to interpret the CalPERS  
 6 requirements as they are being applied to Angela Spaccia.

7 **The Purchase of Additional Retirement Service Credit.**

8 Given the page limitation, Angela Spaccia relies on her paperwork submitted to Judge  
 9 Ahler with respect to the purchase of service credit. However, this disingenuous argument by  
 10 CalPERS shows the extent by which they are being forced politically to appease various  
 11 politicians to deprive Angela Spaccia of legitimate benefits. As even Judge Ahler says,  
 12 Government Code Section 20909 does not prohibit an employer from purchasing service credit,  
 13 and there are legitimate reasons why an employer would buy service credit, for example to  
 14 settle a lawsuit, or encourage older employees to retire.

15 Because CalPERS wrote the statute, it is ironic that its attempt to now negate the very  
 16 words of the statute and negate the rationale for employers purchasing service credit. Perhaps  
 17 CalPERS would be satisfied had the City of Bell paid the employees funds who would then  
 18 write out their check to CalPERS for air time.

19 **CONCLUSION**

20 The proposed decision by Judge Ahler is deficient in a number of respects and the  
 21 Board should refer it back to Judge Ahler or another administrative law judge to consider the  
 22 following issues:<sup>1</sup>

- 23 1. Does the declaration of Clifton Albright and the language of Resolution 2006-42  
 24 delegate to the City of Bell CAO the authority to sign an employment contract  
 25 with Angela Spaccia and all other managers who currently have been awarded  
 26 full pensions?
- 27 2. Are the interpretations of "publicly available" in Regulation 570.5 retroactive  
 28 and therefore applicable to Angela Spaccia?
- 29 3. Assuming that Angela Spaccia is not responsible for either the delegation of  
 30 legal authority in the City of Bell or the compliance with the requirement of  
 31 "public availability," should she lose her pension based on factors over which  
 32 she had no control?

33 Respectfully submitted,

34 Date: April 5, 2013

35 Harland W. Braun  
 36 HARLAND W. BRAUN  
 37 Attorney for Respondent  
 38 PIER' ANGELA SPACCIA

39 <sup>1</sup> Judge Ahler also used the wrong year to establish Spaccia's single highest year of  
 40 compensation. In 2001 Spaccia earned \$11,729.26 per month, and in 2004 Spaccia earned \$10,833.33  
 41 per month, which was publicly approved by the City Council. Both are higher than the 2003 figure  
 42 used by Ahler.

FROM: TO:374\*13102774045 12/14/2012 15:46:24 #2548 P.002/003

DECLARATION OF CLIFTON WADE ALBRIGHT

I, Clifton Wade Albright, declare as follows:

1. I am an attorney licensed to practice in the State of California, State Bar No. 100020, and a partner in the law firm of Albright, Yee & Schmit, 888 West 6<sup>th</sup> Street, 14<sup>th</sup> Floor, Los Angeles, California 90017. I was admitted to the State Bar of California on December 1, 1981, having graduated from Loyola Law School in Los Angeles, California.
2. During the year 2006, I was hired by the City of Bell, California, to give legal advice regarding municipal law, contracts, and any legal problems which might arise in the City. As part of my duties, I became familiar with the new Charter of the City of Bell which was adopted on January 3, 2006. I did not personally write the Charter or participate in the writing.
3. I have attached a copy of the Charter of the City of Bell to this declaration [See Exhibit A].
4. While acting as legal counsel to the City of Bell, I became aware that section 519 of the Charter may have been interpreted to require that every contract, contract for employment, contract for services, and essentially all contractual obligations be approved by the City Council.
5. I also noticed that the second paragraph of section 519 allowed the City Council to authorize the Chief Administrative Officer ["CAO"] to bind the City, with or without a written contract, for the acquisition of equipment, materials, supplies, labor, services, or other items included within the budget approved by the City Council. It concerned me that Robert Rizzo, the Chief Administrative Officer, assumed the power under paragraph two of section 519 without a formal ordinance or resolution passed by the City Council.
6. My law firm developed and wrote Resolution No. 2006-42, entitled "Resolution of the City Council of Bell Implementing Section 519 of the Bell City Charter Pertaining to

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Acquisition of Labor or Service Contracts." A copy of Resolution No. 2006-42 is attached as Exhibit B.

7. Paragraph number one of Resolution 2006-42 authorizes the CAO to bind the City of Bell, by a written contract for the acquisition of labor or services included within the budget approved by the Bell City Council.

8. Paragraph number two simply required that the CAO go through a bidding process for any public works exceeding \$25,000 and regulates contracts for public works.

9. Paragraph number three of Resolution 2006-42 simply states that the CAO may not enter into any written contract for services by any person already employed at the City of Bell at a regular salary.

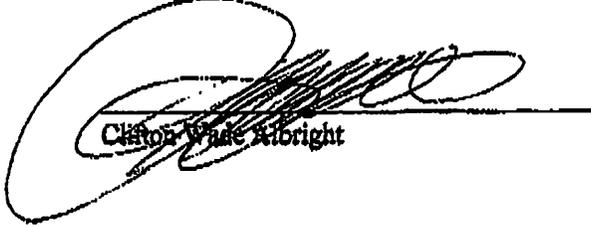
10. On July 31, 2006, it was explained to the City Council that the resolution delegated to the CAO the power to contract for services, labor, and all contractual obligations with several exceptions. As I stated, paragraph two of the resolution excludes public works contracts in excess of \$25,000 which had to be run through a bidding process, and paragraph three prohibited, without City Council approval, additional contractual services to be added to persons who are already employed by the City of Bell.

11. I specifically remember questions from City Councilman George Mirabal and City Councilwoman Teresa Jacobo. I also believe that the Resolution was written in plain English.

12. The City Council voted unanimously to approve the Resolution.

I declare under penalty of perjury the foregoing to be true and correct.

Dated this 14<sup>th</sup> day of December, 2012, at Los Angeles, California.



Clinton Wade Albright

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LOCATION:

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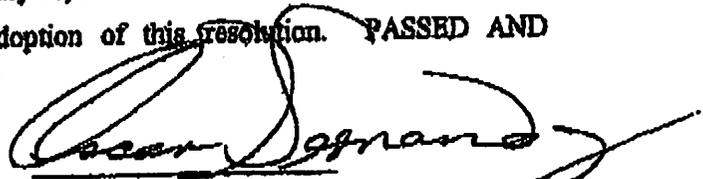
**RESOLUTION NO. 2006-42****RESOLUTION OF THE CITY COUNCIL OF BELL IMPLEMENTING  
SECTION 519 OF THE BELL CITY CHARTER PERTAINING TO  
ACQUISITION OF LABOR OR SERVICE CONTRACTS**

Whereas, the second paragraph of Section 519 of the City's Charter allows the Bell City Council to authorize by resolution the Chief Administrative Officer to bind the City, with or without a written contract, for the acquisition of equipment, materials, supplies, labor, services or other items included within the budget approved by the City Council;

Whereas, the City Council has determined that it is in the interest of efficient administration of the City to authorize the Chief Administrative Officer to bind the City with a written contract for the acquisition of labor or services;

Now, therefore, the City Council of the City of Bell does resolve as follows:

1. Pursuant to the second paragraph of Section 519 of the City's Charter, the Bell City Council hereby authorizes the Chief Administrative Officer to bind the City by written contract for the acquisition of labor or services included within the budget approved by the Bell City Council.
2. Any written contract entered into by the Chief Administrative Officer pursuant to this resolution shall comply with Section 1111 of the City's Charter if Section 1111 would otherwise be applicable in the absence of this resolution.
3. The authority granted by this resolution shall not apply to any written contract for services rendered by any person in the employ of the City at a regular salary.
4. Effective date of this resolution shall be July 31, 2006.
5. The City Clerk will certify to the adoption of this resolution. **PASSED AND APPROVED THIS 31st day of July 2006.**



Oscar Hernandez  
Mayor