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10 BOARD OF ADMINISTRATION

11 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

12 In the Matter of the Calculation of Final  
13 Compensation of,

14 PIER' ANGELA SPACCIA,

15 Respondent,

16 and

17 CITY OF BELL,

18 Respondent.

CASE NO. 2011-0789  
OAH NO. 2012020198

**CALPERS' CLOSING ARGUMENT**

Hearing Date: 12/27-28/2012  
Hearing Location: Orange  
Time: 9:00 a.m.

19 The California Public Employees' Retirement System (CalPERS), submits the following  
20 as its Closing Argument in the above-caption matter.

21 **I. Introduction**

22 Pier' Angela Spaccia (Spaccia) began employment with the City of Bell (City) on July 1,  
23 2003, and over the next seven years served as an assistant for Robert Rizzo, the Chief  
24 Administrative Officer (Rizzo). At all times while employed by the City, Spaccia was in the  
25 unrepresented miscellaneous group and class of employees and was a miscellaneous member of  
26 CalPERS.<sup>1</sup> Her duties, like most employees of the City, were not set forth in a duty statement,  
27 but described in employment agreements as those "set forth in the Bell Municipal Code [and]...as  
28 assigned by [Rizzo]." For all practical purpose this meant they did what Rizzo told them to do.

<sup>1</sup> The City contracted for industrial disability retirement benefits for certain employees, including Spaccia. If industrially disabled, this benefit could render tax exempt of her pension from the City equal to 50% of her final compensation from the City. (Gov. Code §20036; all further statutory references are to Government Code.)

1 (HT2<sup>2</sup>, 13/24 – 14/9, 28.)

2 Her salary was never paid pursuant to a public available pay schedule. Her often  
3 substantial increases in “basic salary” were referenced, often obliquely, in a series of individual  
4 employment agreements adjusted by the fiat of Rizzo.<sup>3</sup> (HT2, 13/20- 14/6.) Significant to the  
5 issues presented in this case is, with a possible exception of her initial agreement effective July 1,  
6 2003, none of these agreements were noticed by the City as part of an agenda packet for the City  
7 Council. (ibid.) Yet, during her brief tenure, Spaccia’s “basic salary” increased nearly 400 per  
8 cent <sup>4</sup> while other non-department head members of her same class of employment received  
9 average annual increases of 4%.<sup>5</sup> In fact, the next highest non-professional member of her group  
10 and class of employment received less than half of Spaccia’s salary.”<sup>6</sup>

11 Leaving employment while the City’s scandal broke, Spaccia filed an application for a  
12 service retirement pending an industrial disability retirement and has been receiving a service  
13 retirement since October 1, 2010. However, because CalPERS determined that her salary did not  
14 qualify as “payrate” and was not final compensation for the purpose of calculating her retirement  
15 allowance; her pension benefit for that period was set using her highest average consecutive  
16 twelve months of compensation paid by other non-City, CalPERS, employers.<sup>7 8</sup> Therefore, to  
17 establish Spaccia’s final compensation with the City, CalPERS used her 5.162 months of  
18 employment with North County Transit, at the average rate of \$8,268.00 per month (\$42,679) and  
19 the balance of the twelve months (6.838 months), from Public Transportation Services  
20 Corporation (formerly Los Angeles County Transportation Commission) at the average rate of  
21 \$7,341.66 (\$50,202.) This total compensation was then divided by 12 to yield an average  
22 compensation earnable of \$ 7,740.14, less \$133 to reflect Social Security System coordination,

23 \_\_\_\_\_  
24 <sup>2</sup> HT1 refers to hearing transcript for 8/27/12; HT2 for 8/28/12; HT3 refers to 8/29/12 and HT4 refers to 12/27/12.

25 <sup>3</sup> At times the agreement would not mentioned any amount, but refer to a dollar or percentage increase to her basic salary “per pay  
26 period.” (CP Exhs. 20.) Ultimately, also agreed that she never received any written evaluations (HT4. 100.)

27 <sup>4</sup> \$8,525 per month in 7/03 to \$31,381 per month in 9/1/09.

28 <sup>5</sup> CalPERS Exh. 33.

<sup>6</sup> Ibid. The Business Development Coordinator received a basic salary of \$10,433.35 per month.

<sup>7</sup> The City of Ventura (CV) – Employer No. 0193, Public Transportation Services Corporation (PTSC) – Employer number 1717  
(formerly 1149) at the average rate of \$7,341.66 and most recent to the City, North County Transit (NCT) – employer number  
1102, at the average rate of \$8,268.00. [HT2, 142-143; CP Exh. 36, 36.)

<sup>8</sup> As background, because she had various employers, varying benefit factors and final compensation periods and because the  
period of employment with the City was too distant from that with her non-City employer, it was necessary to calculate Spaccia’s  
service retirement benefit on a per-employer basis. (Gov. Code §§20638, 20350, 20356.); HT2 -103 – 143.)

1 for an unmodified final compensation amount of **\$7,607 per month**. (HT2, 143; CP Exh. 35,  
2 Declaration of Tomi Jimenez.)

3 CalPERS also discovered that Spaccia (and a select few other individuals including Rizzo)  
4 improperly received additional retirement service credit (ARSC) which they managed to have  
5 paid by the City, in violation of a express statutory provision, that allowed only “the member” to  
6 make such a purchase.<sup>9</sup> On June 12, 2012, CalPERS issued a supplemental determination stating  
7 that it would seek reversal of this purchase. (CP Exh. 4.)

## 8 II. Issues

9 The issues to be decided in this proceeding are:

10 (1) whether, under the Public Employees Retirement Law, CalPERS properly  
11 determined that Spaccia’s compensation with the City did not qualify as compensation earnable,  
12 and

13 (2) whether CalPERS properly determined that ARSC paid for by the City,  
14 and not the member, must be disallowed.

## 15 III. Service Retirement and Payrate - Generally

16 Under the Public Employees’ Retirement Law (PERL) (Gov. Code §20000 et  
17 seq.) a member’s service retirement benefit is calculated using a formula that includes years of  
18 service, age at retirement, and final compensation. The benefit is a fraction of the employee's  
19 “final compensation” multiplied by their years of service and benefit factor.

20 Final compensation is defined by the highest average consecutive 12 or 36 months  
21 covered service. “Compensation earnable” is specifically defined as “Payrate” and “Special  
22 Compensation.”<sup>10</sup>

## 23 IV. Spaccia’s Salary From the City Did Not Qualify as Compensation Earnable

24 In order to qualify as compensation earnable, a member must qualify as either  
25 payrate or special compensation. The only one of these items at issue in this case is whether  
26 Spaccia’s salary from the City was “payrate.”

27  
28 <sup>9</sup> The City purchased for selected employees five years of ARSC. In addition to adding five additional years of service to her  
pension calculation, this purchase also cost the City \$71,085.39 (CP Exh. 12.)

<sup>10</sup> No disputed issue regarding special compensation exists in this case.

1 “Payrate” is specifically defined as:

2 “normal monthly rate of pay or base pay of the member paid in cash to  
3 *similarly situated members of the same group or class of employment* for  
4 services rendered on a full-time basis during normal working hours,  
5 *pursuant to publicly available pay schedules* and for a member who is not  
6 in a group or class, also may be further limited subject to the limitations of  
7 paragraph (2) of subdivision (e)...”<sup>11</sup>

8 **A. Spaccia Was Not Paid Pursuant to Publicly Available Pay Schedules**

9 In order to give effect to the intent of the legislature, in the first instance resort should be  
10 made to the plain meaning of a provisions language (*Bernard v. City of Oakland* (2012) 202  
11 Cal.App.4<sup>th</sup> 1553, 1560-1561; *Oden v. Board of Administration* (1994) 23 Cal.App.4<sup>th</sup> 194, 201.)  
12 In this instance, the statutory language is clear and plain. A publicly available pay schedule  
13 means not only that the salary be “readily available to the public” but also requires that it must be  
14 established “in a public or open manner or place” and “in the name of the community” and “by  
15 public action or consent” (See, tit. 2, Cal. Code Regs. § 570.5; *In re Randy Adams*, OAH No.  
16 2012030095, CalPERS Agency No. 20110788, citing *The Random House Dictionary of the*  
17 *English Language* (2<sup>nd</sup> Ed.) p. 1563.)

18 Even if the express language of the provision were ambiguous, the legislative history of a  
19 statute, as well as the interpretation given by CalPERS as the agency charged with its  
20 enforcement, may be referenced and given great weight and deference. (*Oden v. Board of*  
21 *Administration* (1994) 23 Cal.App.4<sup>th</sup> 194, 204-209; *Prentice v. Board of Administration* (2007)  
22 157 Cal.App.4<sup>th</sup> 983, 989.) The legislative history of the pertinent phrase unequivocally  
23 demonstrates that the intent and purpose for the requirement of a publicly available pay schedule  
24 was to prevent manipulation of compensation earnable by requiring a member’s pension  
25 compensation to be both readily available for public inspection and review, and that it be  
26 established through a recognized publicly noticed process.

27 In an effort to curb the very type of manipulation of compensation which, as seen in this  
28 case, resulted in large unfunded liabilities, the Legislature enacted a series of statutory revisions

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<sup>11</sup> Discussed, *infra*, because the evidence shows Spaccia was in the unrepresented miscellaneous group and class of employment, section 20636, subdivision (e)(2) is not applicable.

1 in the early 1990's (See., CP Exhs. 25, 26 ( Leg. History, Senate Bill 53.)<sup>12</sup> A corner stone in  
2 this legislative scheme was the requirement that compensation be paid pursuant to a publicly  
3 available pay schedule. The Legislature specifically expressed in intent that in order to qualify as  
4 a publicly available pay schedule, document and compensation **“would have to be stable and**  
5 **predictable among all members of a group or class of employment and would have to be**  
6 **publicly noticed by the governing body.”** (emphasis supplied.) (ibid.) Individuals determined  
7 not to be in a group or class of employment is subject to a similar requirement. (*Prentice v. Bd. of*  
8 *Administration, supra*, 157 Cal.App.4<sup>th</sup> at p. 990.)

9 As the agency charged with enforcement of the statutory scheme, CalPERS' interpretation  
10 of the PERL is entitled to great deference and weight, particularly when it has been adopted into a  
11 formal rule through the provisions of the Administrative Procedure Act (APA). (*Yamaha v. State*  
12 *Board of Equalization* (1998) 19 Cal.4th 1, 6-8, 1; *City of Pleasanton et al., v. Board of*  
13 *Administration* (2012) 211 Cal.App.4<sup>th</sup> 522, 539 [“where our review requires that we interpret the  
14 PERL, the court accords great weight to PERS interpretation. (citations) This is in recognition of  
15 the fact that as the agency charged with administering the PERL, PERS has expertise and  
16 technical knowledge as well as ‘an intimate knowledge of the problem dealt with in the statute  
17 and the various administrative consequences arising from particular interpretations... (citations.”]

18 CalPERS has promulgated a regulation establishing a definition of what may qualify as a  
19 publicly available pay schedule. (CP Exhs. 22, 23.) This definition is entitled to and must also be  
20 afforded great deference by this court in deciding this issue.<sup>13</sup>

21 Title 2, California Code of Regulations, section 570.5(a), provides that a publicly  
22 available pay schedule, is one that, inter alia:

23  
24 <sup>12</sup> “We consider not only the specific history of legislative activities terminating in the enactment of the statute at  
25 issue, but also the broader history and impetus for the statute. We must not myopically disregard the milieu of  
26 legislative acts: “[i]n enforcing command of a statute, both the policy expressed in its terms and object implicit in its  
27 history and background should be recognized. (citation)” (*Oden v. Board of Administration* (1994) 23 Cal.App.4<sup>th</sup>,  
28 *supra*, at p. 204.)

<sup>13</sup> Evidence Code section 664 creates the general presumption that a public agency or office has performed its official  
duty. Where this court's review requires it to interpret a statute or regulation, it shall afford great weight to the  
interpretation of the PERL by CalPERS. (*City of Sacramento v. Public Employees' Retirement System* (1991) 229  
Cal.App.3d 1470, 1478, citing, *City of Fremont v. Board of Administration* (1989) 214 Cal.App.3d 1026, 1033 [rev.  
den. Jan. 4, 1990].)

1 Approved and adopted by the employer's governing body in accordance with requirements  
2 of applicable public meetings laws;

3 Shows the payrate for each identified position, which may be stated as a single amount or  
4 as multiple amounts within a range;

5 Is posted at the office of the employer or immediately accessible and available for public  
6 review from the employer during normal business hours or posted on the employer's  
7 internet website;

8 Does not reference another document in lieu of disclosing the payrate.

9 Subsection (b) of this section provides, inter alia, that ...

10 (b) Whenever an employer fails to meet the requirements to subdivision (a) above, the  
11 Board, *in its sole discretion*, may determine an amount that will be considered to be  
12 payrate, *taking into consideration all information it deems relevant* including, but not  
13 limited to, the following:

14 Last payrate for the member in a position that was held by the member and that is listed  
15 on a pay schedule that conforms with the requirements of subdivision (a) of a former  
16 CalPERS employer. (emphasis added)

17 Although promulgated August 1, 2011, this section is applicable to the pending  
18 determination in this case. Any contention by Spaccia to the contrary is misplaced.

19 The regulation was promulgated expressly to clarify and make more specific the existing  
20 law.<sup>14</sup> (CP Exh. 22, Notice of Regulatory Action, p. 1, §1, “This proposed regulatory action  
21 clarifies and makes specific requirement for public available pay schedule ..”; § VI, [“It is  
22 anticipated that those proposed changes to the regulations will provide CalPERS employers the  
23 details to comply with the statutory provisions.” Section 570.5 .. will ensure consistency between  
24 CalPERS employers as well as enhance disclosure and transparency of public employee  
25 compensation by requiring that the payrate...be listed on a schedule ....”]; The Initial Statement of  
26 Reasons, p. 1., § 570.5 states that the purpose for the provision to be [Clarification and  
27 identification of specific requirement or publicly available pay schedule ..”) As such, this section  
28 is fully applicable to the courts review and determination of the issues in this case. (*Prentice v.*  
*Bd. of Administration, supra*, 157 Cal. App. 4th at p. 990, at fn.4; See also, *In re the Calculation*

<sup>14</sup> “Although legislative enactments are generally presumed to operate prospectively and not retroactively [citations], this presumption does not defy rebuttal. We have explicitly subordinated the presumption against the retroactive application of statutes to the transcendent canon of statutory construction that the design of the Legislature be given effect. [Citation.]” (*In re Marriage of Bouquet* (1976) 16 Cal.3d 583, 587, 128 Cal.Rptr. 427, 546 P.2d 1371, fn. omitted.) Thus, our central inquiry is whether the Legislature intended SB 263 to operate retroactively. (*Ibid.*) (*Kuykendall v. State Bd. of Equalization* (1994) 22 Cal.App.4th 1194, 1209.)

1 of Compensation Earnable of Richard G. Krenz (*In re Krenz*) OAH 2011030404; Agency No.  
2 8517, ¶ 20, at pp. 12-13, ¶ 14, at p. 16 [section 570.5 properly applicable to determination of  
3 similar issues of case even where the subject compensation was paid more than a decade before  
4 adoption of this rule.]

5 This interpretation of pay schedule is also consistent with formally adopted administrative  
6 decisions by CalPERS.<sup>15</sup> In the related case of *In Re Randy Adams, supra*, the Board concluded  
7 that “[an] interpretation of “pay schedule” based upon the inclusion of a salary disclosed only in a  
8 budget would promote the vice of permitting an agency to provide additional compensation to a  
9 particular individual without making the compensation available to other similarly situated  
10 employees. Further and more particularly, a written employment agreement with an individual  
11 employee should not be used to establish that employee’s “compensation earnable” because the  
12 employment agreement is not a labor policy or agreement within the meaning of an existing  
13 regulation and would not limit the compensation a local agency could provide to an individual  
14 employee by way of individual agreements for retirement purposes. (citing, *Prentice v. Board of*  
15 *Admin., California Public Employees’ Retirement System, supra*, 157 Cal.App.4<sup>th</sup> at p. 994.) The  
16 Board concluded in *In re Adams* that [t]he term “publicly available” has been determined to be  
17 consistent with “a published monthly payrate,” (*Molina v. Board of Admin., California Public*  
18 *Employees’ Retirement System* (2011) 200 Cal.App.4<sup>th</sup> 53, 66-67.)] (*In re Randy Adams, supra*,  
19 at p. 20, ¶¶ 15, 16; See similarly, *In re Krenz, supra*.)

20 Finally, this interpretation is also consistent with CalPERS 2010 audit. (CP Exh. 29.)  
21 The 2010 audit specifically focused on whether the City had in fact established and paid its  
22 compensation for individuals, specifically including Spaccia, pursuant to publicly available pay  
23 schedules. (Exh. 29, at p. 5-6.)

24 After review of “thousands of pages of documentation”, the audit found; inter alia:

- 25
- 26 ▪ A wide spread lack of information deemed necessary to determine the correctness of retirement benefits, reportable compensation, and enrollment in the retirement system, and
  - 27 ▪ Payrates reported to CalPERS failed to qualify as compensation earnable pursuant to

28 \_\_\_\_\_  
<sup>15</sup> (§§15000 et seq.; tit. 2, Cal. Code Regs., §§ 555 -555.4.)

1 multiple provision of law including section 20636. (Exh. 29, at p. 1.)

2 The audit observed that requests for information, including publicly available pay  
3 schedules, employment agreements approved by the City Council, and any documents which  
4 might be available to substantiate compensation earnable, were either *unavailable or received in*  
5 *such fashion as to require detailed analysis to yield basic relevant information.* (id., at p. 6.) The  
6 audit specifically found documents purporting to be contracts of Spaccia, Rizzo or the Chief of  
7 Police (Adams) *had not been approved through a public process* (id., p. 7-8.) or even that the  
8 payrates reported for Spaccia were approved by the City Council. (id. at p.8.) The City could not  
9 produce any documentation proving that the employment agreements had been approved  
10 (apparently even the initial 2003 agreement). These findings are consistent with the testimony  
11 and Declaration of Rebecca Valdez (CP Exh. 34.)

12 Spaccia apparently contends that her individual employment contracts qualified as  
13 publicly available pay schedules, even if not available to the public or publicly noticed by the  
14 City. Alternatively, she apparently contends that even if her pay and later even her position, were  
15 not listed on the City's pay schedules, her salary might have been ascertainable through some  
16 form of detailed analysis of the City budgetary documents. However, these types of assertions fall  
17 clearly outside of what is required of established public available pay schedules as required by  
18 the applicable law.<sup>16</sup>

19 The relevant circumstances of this case clearly demonstrate that. Spaccia's employment  
20 agreement were changed at will, were not noticed by the City Council and certainly not public.  
21 They were drafted and maintained in a manner specifically intended to obfuscate their  
22 comprehension and frustrate public review. (HT2 38; *In re Randy Adams, supra.*) Rizzo, as  
23 Spaccia knows, boasted that these agreements would never be presented to or approved by the  
24 City Council. (Spaccia, Exh. 39) In point of fact, there is even direct evidence that Spaccia's  
25 Second Addendum may not have actually been signed, by persons whose purported persons

26 <sup>16</sup> "Because, as we view the entire statutory scheme, the limitations on salary are designed to require that retirement benefit be  
27 based on the salary paid to similarly situated employees. PERS acted properly in looking at the published salary range rather than  
28 the exceptional arrangement the city made with Prentice and reflected in the City's budget documents. The defect in Prentice's  
broad interpretation of "pay schedule" is that it would permit an agency to provide compensation to a particular individual without  
making the compensation available to other similarly situated employees." (*Prentice v. Bd. Of Administration, supra*, 157  
Cal.App.4<sup>th</sup> at p. 994.) The same rational for and harm sought to be avoided in the *Prentice* and *Adams* case applies here.

1 whose purported signatures were on the document. (CP, Exh. 21; HT2, 158-160.)<sup>17</sup> Ultimately  
2 even a pretext of “obtaining” signatures and approval by the City Council and City attorney was  
3 discarded.<sup>18</sup>

4 Spaccia may assert that because her position was, at least for a time being, listed on a  
5 salary schedule, even if her salary was referenced only by the term “contract”, it was nonetheless  
6 publicly available to the public and could have been determined by resort to her contract and by  
7 reference to additional information contained with the City’s 5-year budget. However, this  
8 disingenuous contention, particularly under the extant circumstances, is precisely what the  
9 Legislature and the regulation specifically sought to preclude. (*Prentice v. Bd. of Administration*,  
10 *supra*, 157 Cal.App.4<sup>th</sup> at p. 994.)

11 Spaccia knew that starting with her Second Addendum to her Employment agreement,  
12 purportedly effective July 1, 2005, CP Exh. 9) her employment agreements had not been placed  
13 before the City council or even separately included on an agenda:

14  
15 **“Q... [W]as your employment contract for 2005 on the City Council agenda?**

16 **A: It was part of the budget packet. Yes.**

17 **Q: Separately?**

18 **A: None of them were.” (HT2 41, (emphasis added.)**

19 CalPERS properly disregarded such secretive and private documents to avoid the very  
20 abuse that the legislature intended to avoid. (*Prentice v. Board of Administration, supra*, 157 Cal.  
21 App. 4th at p. 994.)

22 Further, the relevant circumstances in this case include the growing scandal in the City  
23 and the still on-going legal proceedings against the principals, including Spaccia and her active  
24 participation in the same. (Spaccia Exh. 39; See also, In *Re Randy Adams, surpa.*) Spaccia knew  
25 that her employment agreements had been “painstakingly” drafted to hamper public knowledge of  
26 her actual salary and to leave the term “pay period” undefined. (HT2, 38; CP Exh. 15; Spaccia

27 <sup>17</sup> It is also at least worth noting that if these documents were in fact “publicly available” why, purportedly a year after it was  
signed, was only an unsigned version of the document used in the correspondence regarding an exception under section  
20636(e)(2)?

28 <sup>18</sup> By the end of 2005 and from that point on, the Spaccia agreements were admittedly and adamantly never submitted for review  
or approval by any elected official or the public. (See, Spaccia Exhs.39.)

1 Exh. 39.) She also was aware that earlier pay schedules, that at least listed her position, only  
2 stated her salary by using the term “contract” and erroneously indicating that her salary was per  
3 month. (CP Exh. 20.) Therefore, even had someone actually been able to obtain a copy of the  
4 employment agreement, because the agreement was drafted in a way not to specify the “pay  
5 period”, a casual review without reference to additional documentation, would further obscure the  
6 actual compensation paid. However, even further avoiding the possibility someone might even  
7 request a copy of her contract, later version of the City pay schedules, removed even the mention  
8 of her position. (Exh.20, Resolution No. 2008-27; HT4 103-104.)

9 Finally, Spaccia has argued that Rizzo had unilateral authority to sign off on her  
10 employment agreements. However, even if this were correct (which seems very doubtful), such a  
11 process would still not render her employment agreements publicly available pay schedules.  
12 (HT1, 24.)

13 The “relevant circumstances” in this case lead to only one conclusion that they exemplify  
14 the type of wide spread manipulation and abuse that the statutory and regulatory scheme was  
15 “designed” to prevent. Accordingly, CalPERS properly used compensation other than that  
16 provided through the City. (tit. 2, Cal. Code Regs., 570.5, subd. (b)(4).) CalPERS determination  
17 must be affirmed.

18 **V. Spaccia Salary Exceeded that of Similarly Situated Members of Her Group**  
19 **and Class of Employment**

20 A further requirement under the PERL for a member’s salary to qualify as compensation  
21 earnable is that it be consistent with that of similarly situated members of a “group or class of  
22 employment.” A “group or class of employment” is defined by statute as employee considered  
23 together because they share similarities in *job duties, work location, collective bargaining unit, or*  
24 *other logical work-related grouping*, (§20636,sub(e)(1).) One employee may not be considered  
25 a group or class.” However, other than it be based on a “logically work related grouping” a group  
26 or class may be based on any logically work related criteria that can be shared between at least  
27  
28

1 two employees.<sup>19</sup> Similar to the requirement for a publicly available pay schedule, the  
2 application of “group and class” requirement is to curb and prevent the ability of an employer to  
3 treat and provide a select group of employees differently by providing enhanced level of  
4 compensation and benefits (e.g., incremental increases in pay.) (*Prentice v. Bd. of*  
5 *Administration, supra*, 157 Cal.App.4<sup>th</sup> at pp. 992-994.)<sup>20</sup>

6 At all times during her employment with the City, Spaccia was an unrepresented and  
7 miscellaneous employee. (Exh. 20, City of Bell Resolution No. 2003-31.) Spaccia has asserted  
8 and argued that she was not a department head, had no supervisory duties and was not responsible  
9 for a budget. (HT2, 21/2 -23/7.) Nor did she share the duties with elected officials and  
10 adamantly repeated her assertion that her duties were not similar to that of the CAO. (ibid.) She  
11 now asserts she was just a “regular employee” (non-management) who was assigned to perform  
12 “special projects” at the direction of the CAO. One of them apparently being the “go to” person  
13 in the City for CalPERS’s related issues (HT2, 37; Spaccia Exh. 31.)

14 Accordingly, her proper work related group or class should be as a non-professional, non-  
15 department head member of the unrepresented miscellaneous employee group and class of  
16 employment. As such, her salary was consistently over reported. (See, CP. Exh. 33; HT2 191-  
17 196.)

18 Spaccia may further argue that, at least for use in calculating her pension, CalPERS  
19 should use as her group and class of employment her “Pay Classification” as “Executive” or  
20 “Administrative Management”. (HT2 16/21-17/13; CP 20”.) However, even Spaccia conceded  
21 that these fluctuating lists of individuals did not reflect any work related criteria, but only served  
22 to identify the level of benefits special individuals would receive such as deferred compensation  
23 ARSC purchases. (Ibid; HT2, 18/25 – 19/8, 28/1 – 30/28).

24 **“Q: Are these people classified in the subsection based upon what their competence**  
25 **was?”**

26 <sup>19</sup> A statutory provision is so drafted so that the legislature need not spell out in advance every contingency in which the statute  
could apply. (Sutherland, Statutes and Statutory Construction, 6th ed., (2000 Revision) §47:17, p.p. 281-282.)

27 <sup>20</sup> “... “[c]alculation of ‘compensation earnable’ is not based on individual efforts ... .” (*City of Sacramento v. Public Employees*  
*Retirement System, supra*, 229 Cal.App.3d at p. 1479.) Rather, both components of “compensation earnable,” an employee’s  
28 payrate and special compensation are measured by the amounts provided by the employer to similarly situated employees. (See §  
20636, subds. (b)(1), (2), (c), (e)(2).)”

1           **A: I don't believe so. ...**  
2           **Q: Over time, the executive management, positions in the administrative**  
3           **management, and the position in the Management ...changed; right?**  
4           **A: Position title, yes. ...**  
5           **Q: Why were these positions slotted under the subcategories if you know. A:**  
6           **Benefits....Q: So this is really reflective of, not unnecessarily the duties, but its**  
7           **reflective of what the benefits were?**  
8           **A: Yes. (HT2II, pp 28-29.)**  
9           **Q. And do you know why that change was made (adding Spaccia to the Executive**  
10           **management category)? ...**  
11           **A: That had to do with 401(A) benefit. When Patricia Casjens left employment, the**  
12           **401(A) required two participants. So there were two participants in the executive**  
13           **management. So he move me into that category. He, the CAO.**  
14           **Q: Did your duties change when you moved into that category? A: No. (HT2, 30.)**

10           These are not a “logical work related grouping.” To construe them to be would result in  
11 the absurdity and circular reasoning that virtually any increase or special benefit could be  
12 justified, merely because it was provided to the individual - regardless of whether other members  
13 in the same group or class of employment received the same. As would seeking to use the Pay  
14 Classification as an alternative group or class. (*Prentice v. Board of Administration, supra*, 157  
15 Cal.App.4<sup>th</sup> at p. 993, [“we do not believe that for purposes of applying the limitations on  
16 compensation earnable set forth in the PERL an employee may be a member of more than one  
17 group or classification. We note that in both the PERL and the applicable regulations, references  
18 to class, group or classification are, for the most part, preceded by the definite article "the," rather  
19 than the indefinite "a." This word choice strongly implies the existence of a single classification  
20 rather than alternative classifications. More importantly, the alternative classification scheme  
21 *Prentice* asserts would be inconsistent with what we perceive as the central role of the limitations  
22 on compensation earnable, to wit: preventing local agencies from artificially increasing a  
23 preferred employee's retirement benefits by providing the employee with compensation increases  
24 which are not available to other similarly situated employees. An alternative classification scheme  
25 would plainly give local agencies a level of flexibility inconsistent with the purpose of the  
26 limitations.]<sup>21</sup>

27           <sup>21</sup> ” The rules of construction discussed in *Prentice* are not mere abstract exercises in semantics. (Sutherland, *Statutes and*  
28           *Statutory Construction* (6th Ed. Revised 2000), §47:18, p. 289.) Accepted rules of interpretation including *ejusdem generis* or  
          *noscitur a sociis* may be used to affect the intent of a provision otherwise manifested by a common sense reading of its plain  
          language (*Dyna-Med Inc. v. Fair Employment and Housing Comm.* (1987) 43 Cal.3d 1379, 1391; *Scally v. Pacific Gas & Electric*

1 CalPERS has presented evidence and established the members of this class as well as their  
2 associated salaries, increases and benefit. In that case, CalPERS has presented evidence that  
3 other similarly situated members of her group and class, with a single exception, ranged from  
4 \$3,122.72 for an Office Assistant to \$7,828.77 for the Senior Accountant. (Exh. 20, City  
5 Resolution No. 2008-28, Exh. 33.)<sup>22</sup>

6 **B. Spaccia's Reliance on An Erroneous Section 20636, Subdivision (e)(2)**  
7 **Exception Is Misplaced**

8 In 2006 an audit by the CalPERS, Office of Audit Services (OAS), observed a large  
9 increase in the salary for the CAO of the City and suggested that if he were to retire in the next  
10 three years, the City may wish to seek an exception under section 20636, subdivision (3)(2).  
11 Otherwise, the increase in pay would be limited to no more than 10 percent of others in his  
12 membership classification. Even though she was in a group and class of employment, apparently  
13 seeking to insulate her "spiked" salary, Spaccia took the opportunity to request an exception for  
14 her own large pay increase and those of a few members of the City Council. (Spaccia Exh. 31;  
15 HT2, 33.1-36/14.) Spaccia even attempted to justify her increase as an "award" for her services.  
16 (Spaccia Exh. 31.) The request was communicated to a CalPERS staff person who purportedly  
17 granted it without supervisor approval or review. (HT2, 198.)

18 However, the request was patently inappropriate and its granting clearly erroneous.  
19 Spaccia apparently thought that she was insulating her own inflated salary from accusation of  
20 pension spiking. (Spaccia Exh. 36.) She even tries to erroneously place herself, the CAO and a  
21 few Council members in a separate class:

22 **"Because we were all of the age that if any of us were to retire within**  
23 **those next three years, there would have been that concern with pension**  
24 **spiking. So that's why the exception was requested." (HT4 103.)**

25 (1972) 23 Cal.App.3d 806.) Applied here these rules conflict sharply with an attempt to group or class Spaccia and others by the  
26 fact they were chosen by Rizzo for special enhanced benefits. This type of grouping conflicts with the legislative purpose.  
27 (Singer, Statutes and Statutory Construction" (6th Ed. 2000), §47:22, pp. 302-303.) Allowing, Spaccia to "back into" a  
28 group or class based on benefits paid rather than work related indicia, results in both an absurd result as well as  
presents a basis for classification that is entirely inconsistent with those enumerated by this statutory and regulatory definition of  
the term as used in the PERL.

<sup>22</sup> Amounts are for 2012 FY during which time Spaccia was paid for only two months before separation. The single exception  
was the Accounting Manager, a position dramatically unlike Spaccia in its assignments and duties, including but not limited to the  
supervision of subordinate staff. That position was paid, pursuant to a salary schedule, at the rate of \$10,212.22 per month.

1 Further, even if entitled to seek an “exception” it would only apply to circumscribe an  
2 increase in her “payrate.” The exception does not grant and imprimatur to her salary and render  
3 it immune from a finding of being “spiked.” Finally, the simple fact is that the exception would  
4 be meaningless since she did not in fact retire within the subsequent three years. The purported  
5 granting of this exception in this proceeding is irrelevant.<sup>23</sup>

6 **VI. CalPERS Properly Determined that Spaccia Is Not Entitled to Retain ARSC**

7 On May 15, 2004, Spaccia submitted her request for CalPERS to determine the cost for  
8 her to purchase an additional five years’ retirement service credit (ARSC). (CP Exh . 24.) After  
9 receiving the quote and electing to complete the purchase by a single lump sum payment, Spaccia  
10 certified her own employment and apparently directed that a lump sum \$71,085.39 be paid by,  
11 rather than through, the Surplus Property Account for the City. (Ibid)

12 It was later that CalPERS discovered that the funds Spaccia had used for her purchase  
13 were the City’s funds, not hers. (CP Exh. 24) Employer paid ARSC is not permissible under the  
14 plain and specific language of the applicable section, which permits only a “member” to make  
15 such purchases. (§20909; Exh. 24.)

16 Under the program, it is the member who is responsible for paying the entire costs of the  
17 purchase, thereby rendering it cost neutral to the employer. Having the employer actually pay for  
18 this employee benefit, in fact, resulted in the employer absorbing the estimated \$757.91 per  
19 month increase in Spaccia pension (even based on the reduced level of compensation and benefit  
20 factors used) (CP Exh. 4; See also CP Exh. 36.)

21 As discussed, *supra*, the primary objective is to determine and give effect, if possible, to  
22 the intent of the legislature. (*Oden v. Board of Administration, supra*, 23 Cal.App.4th at p. 201.)  
23 In Section 20909 states in unqualified terms that only “a member”<sup>24</sup> may purchased ARSC.

24 If the statute need be construed, this court may not insert language which has not been  
25 omitted nor ignore language that has been inserted (*People v. National Auto. and Cas. Ins. Co.*

26 \_\_\_\_\_  
27 <sup>23</sup> Finally, the erroneous action by a single staff person is entitled to no deference in this matter. (*Yamaha v. State Board of*  
*Equalization, supra*, 19 Cal.4<sup>th</sup> at pp. 12-13 [“Interpretations reflected in documents resulting from ministerial acts, that are  
contained in letter prepared by a single staff person ... are entitled to no deference.”])

28 <sup>24</sup> The term “member” is specifically defined under § 20370 as an “employee.” See Also, § 20371, “Member  
Classification.”

1 (2002) 98 Cal.App.4th 277, 282). And, while the term “may” might be interpreted in several  
2 ways, but only in relation to its subject. It would defy any rational reading of the provision and  
3 accepted rule of construction and interpretation to infer an unexpressed intent to create a right in  
4 another entity (an employer may) purchase ARSC. Spaccia seeks to add language to the  
5 provision or interpret the lack of a prohibition on employer paid ARSC to mean an approval of  
6 such practice. Such interpretation is not supported by the plain language of this section, nor  
7 should be it inferred through statutory construction.<sup>25</sup>

8 Furthermore, the legislative history of section 20909, would prohibit this practice. The  
9 requirement that the ARSC may only be purchased by the member is to ensure that it would be  
10 cost “cost neutral” to the employer. (Exh. 26, p. 2, [“...the benefit is intended to be cost neutral  
11 to employers. The member pays the full present value cost of the additional service credit.”];  
12 Exh. 26-A, p. 4 of 6, [“..benefit to be cost neutral to employers.”]; Exh. 26-D., p. 1, [“...law  
13 intended to be fully member funded.”]) See also, Concurrence in Senate Amendment, SB 719,  
14 8/18/03, at p. 2; [“The other type of payment is known as the ‘full present value’ payment. In  
15 this case, the member pays for the full cost of the increase in benefit that will result from the  
16 service credit purchase...”].]

17 Even Spaccia appears to recognize the lack of merit to her argument when she attempted  
18 to rewrite the legislative history. The Senate Analysis of SB719, at page 2, unequivocally stated:  
19 **“This bill...[s]pecifically that the cost of the ‘air time’ service credit will  
20 be fully paid by the member, with no employer contribution permitted.”<sup>26</sup>**

21 This court must not ignore the plain language of section 20909 and cannot confirm to  
22 Spaccia a right to a benefit to which she is not otherwise entitled. CalPERS determination that  
23 Spaccia is not entitled to the ARSC must be sustained.<sup>27</sup>

24 <sup>25</sup> Such redrafting as proposed by respondent carries with it the usual mischief by such unwarranted assumptions. “Qualifying the  
25 unqualified language of a statute with unexpressed exception premised on legislatively unmentioned policy judgment creates a  
26 trap of the wary reader, undermines the predictive value of statutory language so necessary for jurisprudential stability, imposes  
transaction costs consisting of lawyer and judicial hours scouring case law for counterintuitive interpretations and risk judicial  
trespass upon the legislature’s province by varying the enacted words of the statute.” (*Pacific State Bank v. Greene* (2003) 110  
Cal.App.4th 375, 379-380.)

27 <sup>26</sup> Committee materials are properly consulted to understand legislative intent, since it is reasonable to infer the legislators  
considered explanatory materials and shared the understanding expressed in the materials when voting to enact a statute. (*Napa  
Valley Wine Train, Inc. v. Public Utilities Com.* (1990) 50 Cal.3d 370, 382, fn. 19.)

28 <sup>27</sup> This benefit as well is one that was concededly not available to all members of Spaccia group or class of employment, but only  
to a select few employees. (HT2, 18-19.)

1           **VII. Spaccia Has Not Established Estoppel Nor Can It Be Used To Prevent The**  
2           **Proper Establishment of Her Compensation Earnable and Cancellation of**  
3           **ARSC**

4           Spaccia argues that, notwithstanding the requirements of the PERL, CalPERS  
5 cannot adjust her compensation earnable and must permit her to retain her ARSC. She  
6 apparently contends that because CalPERS failed to discover and bring to light the abuse  
7 and unlawful activity of the City earlier (as part of its 2006 audit and granted her a one  
8 time exception to her spiked salary) it should be required to use her “basic salary” as set  
9 by her employment agreements to calculate her pension benefit. Further, since it took the  
10 City’s money for the ARSC, regardless of whether she knew it was paid only by the City,  
11 CalPERS should be barred from reversing this transaction.

12           The party asserting the doctrine of equitable estoppel must establish: (1) the party  
13 to be estopped was apprised of the facts; (2) the party to be estopped intended or  
14 reasonably believed that claimant would act in reliance on its conduct; (3) the claimant  
15 was ignorant of the true state of facts; and (4) the claimant actually and reasonably relied  
16 on the conduct of the party to be estopped to his detriment. *City of Long Beach v.*  
17 *Mansell* (1970) 3 Cal.3d 462, 489. Where estoppel is sought to be asserted against a  
18 governmental entity, a fifth element must be established - the interests of a private party  
19 must outweigh any effect on public interests and policies. *Mansell*, at pp. 496-97.<sup>28</sup> It is  
20 the burden of the party asserting estoppel to affirmatively establish each of its elements  
21 and where one of the elements is missing there can be no estoppel. (*McCoy v. Board of*  
22 *Retirement* (1986) 183 Cal.App.3d 1044, 1051 fn.5; *People ex rel. Franchise Tax Bd. v. Superior*  
23 *Court* (1985) 164 Cal. App.3d 526, 552. see also, *Molina v. Board of Retirement, Los Angeles*  
24 *County* (2003) 112 Cal.App.4<sup>th</sup> 864, 868.)<sup>29</sup>

25 <sup>28</sup> In order to successful assert estoppel against governmental entity appellants must establish that (1) the government’s actions  
26 amounted to “affirmative misconduct,” and (2) “the government’s wrongful conduct threatened to work a serious injustice and . . .  
the public’s interest would not be unduly damaged by the imposition of estoppel.” See *Jaa v. U.S. I.N.S.*, 779 F.2d 569, 572  
(9th Cir. 1986) (citations omitted); See also *Driscoll v. City of Los Angeles* (1967) 67 Cal.2d 297

27 <sup>29</sup> CP Exhs. 25, 26, Enrolled Bill Report, SB 53, PERS , 4/6/93, p. 4.

28 <sup>29</sup> “PERS makes actuarial assumptions based on historical compensation figures. Based on those assumptions, it establishes rates  
for member contribution to be paid by employees, and by employers on their behalf. The assumptions incorporate an estimate of  
how much an employee’s compensation will increase each year. If the employee’s compensation increases at a greater rate, a  
potential for underfunding is created...’PERS’ desire to maintain the actuarial soundness of the system it administered reflected

1 Retirement benefits are entirely creatures of statute. (*Hudson v. Posey, supra*, 255  
2 Cal.App.2d at p. 91.) “estoppel cannot rewrite a statutory limitation on a benefit or privilege.  
3 Neither the doctrine of estoppel nor any other equitable principle may be invoked against a  
4 governmental body where it would operate to defeat the effective operation of a policy adopted to  
5 protect the public. .. our holding that granting relief would exceed statutory authority leaves no  
6 room to apply the estoppel doctrine.” (*Smith v. Governing Bd. of Elk Grove Unified School Dist.*  
7 (2004) 120 Cal.App.4<sup>th</sup> 563, 569, internal citations and punctuation omitted.)

8 Summarizing the decisional law, the California Supreme Court in *Longshore v.*  
9 *County of Ventura* (1979) 25 Cal.3d 14, concluded:

10 **[N]o court has expressly invoked principles of estoppel to contravene directly any**  
11 **statutory or constitutional limitations.**

12 Likewise, the doctrine may not authorize an order compelling PERS to pay greater  
13 benefits than section 20636 allows, either by estoppel or as tort damages for an inadvertent  
14 failure to timely correct a contracting agency’s error. (Cf. § 20160, subd. (a)(3) [authorizing  
15 PERS to correct errors or omissions of members, contracting agencies, or itself, but not to  
16 provide the party seeking correction with a “status, right, or obligation not otherwise available”  
17 under the PERL.] “(*Pleasanton v. Board of Administration, supra*, 211 Cal.App.4<sup>th</sup> at pp. 748.)

18 Decisions such *Crumpler v. Bd. of Admin.* (1973) 32 Cal.App.3d 567, are not to the  
19 contrary. It was only after finding all prerequisites for applying estoppel were indisputably  
20 present and that the Board was not without *the power to effect that which estoppel against it*  
21 *would accomplish.* (*Id.* at pp. 582-584.) and *was not depriving the public of the protection of any*  
22 *statute ...*, did it permit estoppel. (*Id.*) A party may not, by estoppel, obtain relief that otherwise  
23 would be “harmful to some specific public policy or public interest or where it would enlarge the  
24 power of a governmental agency or expand the authority of a public official. (*Id.* at pp. 580-  
25 581,<sup>30</sup> See also, *Medina v. Board of Retirement, supra*, 112 Cal.App.4<sup>th</sup> at p. 870; see also *Fleice*

26 not only its own interest but also a recognized public policy.’ (*Hudson v. Board of Administration, supra*, 59 Cal.App.4<sup>th</sup> at p.  
27 1310, citing, *Board of Administration v. Wilson* (1997) 52 Cal.App.4<sup>th</sup> 1109, 1133.)

28 <sup>30</sup> “Petitioners have no vested right in an erroneous classification. Indeed, as we have noted, the act expressly provides for  
correction of errors such as occurred in the instant case.” (*Id.* at p. 586.)

1 v. *Chualar Union Elementary School Dist.* (1988) 206 Cal.App.3d 886, 893 [“principles of  
2 estoppel are not invoked to contravene statutes and constitutional provisions that define an  
3 agency’s powers”].)<sup>31</sup>

4 Spaccia requests that this court estop CalPERS from enforcing express provisions of the  
5 PERL and policy and confer on her benefits, notwithstanding the conflict with and utter absence  
6 of legal authority. However, estoppel cannot be allowed to compel a governmental agency to  
7 perform a function that it does not possess the authority to do and to prevent it from undertaking  
8 a duty it is required to perform. Spaccia also apparently bases her demand that her employment  
9 agreements were lawfully executed and contributions were paid by the City to CalPERS on the  
10 reported amounts. However, even if correct, public agencies are not free to define their  
11 employee contributions as compensation or compensation earnable under PERL—the  
12 Legislature makes those determinations.” (*Oden v. Board of Administration, supra*, 23  
13 Cal.App.4th at p. 201.). Allowing conduct of the City to estop PERS would, in effect, permit  
14 the City to usurp PERS' statutory authority to determine compensation for retirement purposes,  
15 and promote creation of large unfunded liabilities to both the current employer and prior  
16 CalPERS employers. (CP, Exh. 36, Declaration of Kung –Pai Hwang.) Further, “where an  
17 employee has worked for more than one employer which participates in PERS, any underfunding  
18 could increase the contribution rate not only of the most recent employer, but also of any  
19 previous employer.” (*ibid.*, at p. 749.) Such is precisely the circumstances and effect in this case.  
20 (See, CP Exh. 36.)

21 Furthermore, CalPERS is not in privity with the City such that it is bound by the City’s  
22 actions. “to find an estoppel by privity in this context could have the pernicious effect of  
23 inducing subordinate governmental entities to disregard the rule of law.” (*Hudson v. Board of*  
24 *Administration, supra*, 59 Cal.App.4<sup>th</sup> at P. 1332; *See also, City of Pleasanton v. Board of*  
25 *Administration, supra*, 211 Cal.App.4<sup>th</sup> at p. 543, fn. 11.)

26  
27 \_\_\_\_\_  
28 <sup>31</sup> “PERS’s fiduciary duty to its members does not make it an insurer of every retirement promise contracting agencies makes to their employees. PERS has a duty to follow the law. As stated in *City of Oakland*, the policy reflected in the constitutional provision is to “ensure the rights of members and retirees to their full, earned benefits.” (*City of Oakland, supra*, 95 Cal.App.4th at p. 46.)

1 Even if it would not conflict with both express and specific provisions of law and public  
2 policy, Spaccia claim of estoppel must fail because she has not established even the basic  
3 elements for the doctrine to apply in this case. Spaccia suggests that because of its 2006 audit,  
4 CalPERS, knew or should have known, of the “defects” in the City’s compensation system.<sup>32</sup>  
5 But, there is no evidence that supports that CalPERS knew that Spaccia’s salary was not paid  
6 pursuant to a publicly available pay schedule. In essence, she argues that had CalPERS caught  
7 onto the scams she and others in the city were perpetrating, she could have taken alternative  
8 action to mitigate her current position.

9 The facts show that when the 2006 audit of the City<sup>33</sup> specifically stated that it reviewed a  
10 sample of documents pertaining to 14 current and retired employees for two pay periods over a  
11 three year period. The audit “reconciled” the City’s payroll register with the corresponding data  
12 posted to CalPERS. (Spaccia Exh. 31; audit, at p. 3-4;.) Furthermore, Item Number 2, of the  
13 audit, under a risk category captioned “[t]he City may not pay employees “pursuant to public  
14 salary information” the further stated only that it had sampled a single service period (06-3) and  
15 was able to “reconcile” the City’s “payroll registers and payrates” to the City’s “salary schedules  
16 and Board Resolutions.” (Audit, at p. 8.) There scope of the audit did not extend to the issue of  
17 whether these agreements or salaries were publicly noticed and available to the public.<sup>34</sup> Any  
18 putative reliance on the 2006 “exception” request is also not apparent. If for no other reason than  
19 the fact, Spaccia did not retire within the applicable time period for the exception to even be  
20 relevant.

21 Spaccia was well aware of the scope of the audit, she was the liaison for the City on this  
22 audit and was well aware of its scope and what was in fact taking place at the City that she did  
23 not provide to the auditors. (Spaccia Exh. 31) Instead, what she did do was mistakenly seek to  
24

25 <sup>32</sup> This rule and policy is not displaced by the fact that Bell became a charter city. (Gov. Code § 20125, the Board is the “sole  
26 judge of the conditions under which persons may be admitted to and continue to receive benefits under the system; *Marsille v.*  
*City of Santa Ana* (1976) 64 Cal.App.3d 764, 771.)

27 <sup>33</sup> In 2006 there were in excess of 2,500 Local Public Agencies, as well as the state agencies and state universities participating in  
28 CalPERS. (Audit, p. 1.)

<sup>34</sup> As a further observation it noted that the CAO had received a 47.33% increase effective July 1, 2005.” The audit suggested that  
if an Rizzo was intending to retire soon, and an “exception” was not granted by CalPERS, this increase may be reduced per  
California Government Code, Section 20636(e)(2).” (Ibid.) No mention was made or evidence presented to indicate regarding  
Spaccia’s salary and/or made a similar recommendation.

1 insulate her spike salary and putative pension benefits from what she feared may be a finding  
2 that they were improperly or unlawfully spiked. (See discussion regarding section 20636,  
3 subdivision (e)(2), supra.) Perhaps, had Spaccia not been so concerned with preserving her own  
4 salary, but brought to light the details of Rizzo and her actions earlier, it may have made a  
5 difference to her current circumstances. But she did not, and as a result CalPERS “did not have  
6 actual knowledge of the true facts [and] did not have notice of facts sufficient to put a reasonably  
7 prudent man upon inquiry, the pursuit of which would have led to actual knowledge.”  
8 (*Pleasanton v. Board of Administration, supra*, 211 Cal.App.4<sup>th</sup> at p. 748.) Instead Spaccia was  
9 both aware of the “defects” but promoted and facilitated their implementation by her own  
10 conduct, (Spaccia Exh. 36 e-mail from Adams See also, HT2, 44-45, Spaccia was aware her  
11 agreements were not being submitted for approval by the City Council, even before the Charter.)  
12 Spaccia clearly aware of the actual facts that would have rendered her payrate and ARSC  
13 purchase unlawful. Spaccia, not CalPERS, was uniquely aware that “her” putative ARSC  
14 purchase was paid entirely out of the City’s confers.

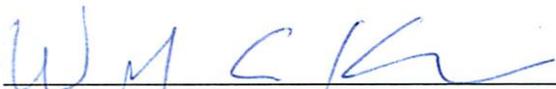
15 Spaccia may have hoped to get out cash before the roof fell in, but she has failed to  
16 demonstrate that she relied on any representation by CalPERS. CalPERS has a statutory duty to  
17 do so, and she suffers no loss by receiving a correct and proper pension benefit. (§ 20160, subd.  
18 (b); *Crumpler v. Board of Administration, supra*, 32 Cal.App.3d at p. 586).

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Dated: January 28, 2013

Respectfully submitted,

CALIFORNIA PUBLIC EMPLOYEES’  
RETIREMENT SYSTEM

By   
WESLEY E. KENNEDY  
Senior Staff Counsel  
Attorney For Respondents

## PROOF OF SERVICE

I am employed in the County of Sacramento, State of California. I am over the age of 18 and not a party to the within action; my business address is: California Public Employees' Retirement System, Lincoln Plaza North, 400 "Q" Street, Sacramento, CA 95811 (P.O. Box 942707, Sacramento, CA 94229-2707).

On January 28, 2013, I served the foregoing document described as:

CALPERS' CLOSING ARGUMENT - In the Matter of the Final  
Compensation Calculation of PIER'ANGELA SPACCIA, Respondent, and  
CITY OF BELL, Respondent

on interested parties in this action by placing \_\_\_ the original XX a true copy thereof enclosed in sealed envelopes addressed as follows:

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- ] BY MAIL -- As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Sacramento, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing an affidavit.
- ] BY TRANSMITTING VIA EMAIL the document(s) listed above to the email address(es) set forth above on this date before 5:00 p.m.
- ] BY OVERNIGHT DELIVERY: I caused such envelope(s) to be delivered to the above address(es) within 24 hours by overnight delivery service.
- ] BY TELEFACSIMILE: I caused such documents to be telefaxed to the fax number(s) shown above.

Executed on January 28, 2013, at Sacramento, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Barbara Moseman  
NAME

  
SIGNATURE