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Public Employees' Retirement System

6 BOARD OF ADMINISTRATION

7 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

9	In the Matter of the Statement of Issues	)	CASE NO. 2011-0789
	Against:	)	OAH NO. 2012020198
10)	
11	PIER'ANGELA SPACCIA,	)	CALPERS' REQUEST TO CROSS-
		)	EXAMINE DECLARANT CLIFTON
12	Respondent,	)	WADE ALBRIGHT, ESQ. AND
		)	NOTICE PURSUANT TO
13	and	)	GOVERNMENT CODE §11514
)	
14	CITY OF BELL,	)	Hearing Date: 12/27-28/2012
		)	Hearing Location: Orange
15	Respondent.	)	Time: 9:00 a.m.
)	

16 Request for Cross-Examination

17 CalPERS requests the right to cross-examine declarant Clifton Wade Albright,
18 Esq. pursuant to Government Code Section 11514.

19 BOARD OF ADMINISTRATION, CALIFORNIA
20 PUBLIC EMPLOYEES' RETIREMENT SYSTEM

21 Dated: December 20, 2012

22 
23 WESLEY E. KENNEDY, SENIOR STAFF COUNSEL
24
25

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 December 20, 2012, I served the foregoing document described as:

CALPERS' REQUEST TO CROSS-EXAMINE DECLARANT CLIFTON WADE ALBRIGHT, ESQ. AND NOTICE PURSUANT TO GOVERNMENT CODE SECTION 11514 - In the Matter of the Calculation of Final Compensation 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:

Harland W. Braun, Esq.
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- [X] 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.
- [X] 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.
- [X] BY TELEFACSIMILE: I caused such documents to be telefaxed to the fax number(s) shown above.

Executed on December 20, 2012, 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

Barbara Moseman
SIGNATURE

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6
7
8 BOARD OF ADMINISTRATION

9 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

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In the Matter of the Statement of Issues
Against:

CASE NO. 2011-0789
OAH NO. 2012020198

PIER'ANGELA SPACCIA,
Respondent,

CALPERS' OBJECTION MOTION
TO DECLARATION OF CLIFTON
WADE ALBRIGHT, ESQ. AND
HARLAND W. BRAUN, ESQ.

and

CITY OF BELL,

Hearing Date: December 27-28, 2012
Hearing Location: Orange
Time: 9:00 a.m.

Respondent.

19 The California Public Employees' Retirement System (CalPERS), hereby
20 requests a ruling excluding the proffered testimony of Clifton Wade Albright, Esq. and
21 Harland Braun, Esq. as improper opinion and/or irrelevant.

22 I.

23 INTRODUCTION

24 The issues in this proceeding are (1) whether the remuneration paid Pier'Angela
25 Spaccia's (Spaccia) by the City of Bell qualifies as "compensation earnable" for

1 purposes of calculating her pension benefit under the Public Employees Retirement
2 Law (PERL), and (2) whether the purchase of additional retirement service credit
3 (ARSC), paid directly and entirely by the employer, rather the member, is improper and
4 must be rescinded.

5 On December 18, 2012, less than 10 days before the continued hearing in this
6 matter, Ms. Spaccia served an affidavit, pursuant to Government Code section 11514,
7 purporting to be that of a member of a firm that at one time represented the City of Bell.
8 The affidavit purports to attest that someone in the affiant's firm drafted a resolution for
9 the City granting the Chief Administrative Officer unilateral authority to enter into
10 exorbitant employment agreements, including that of Ms. Spaccia, without review or
11 consent of the City Council (no less the public.) This request must be stricken and not
12 received for any purpose. It is not in compliance with express requirement of
13 Government Code section 11514.

14 Even, if received by the court, it should not be admitted for any purpose, in that:

- 15 (1) It constitutes inadmissible hearsay;
16 (2) it is not relevant to the issues before this court;
17 (3) it consists of improper opinion testimony.

18 **II**

19 **SPACCIA'S SUBMISSION FAILS TO MEET THE REQUIREMENTS OF § 11514**

20 Government Code § 11514 provides, in pertinent part:

21 "At any time 10 or more days prior to a hearing or a
22 continued hearing, any party may mail or deliver to the opposing
23 party a copy of any affidavit which he proposes to introduce in
24 evidence, together with a notice as provided in subdivision (b).

25 Mr. Albright's declaration was not delivered "10 or more days, prior to a hearing
or continued hearing." Accordingly it cannot be received for any purpose under

1 Section 11514.

2 Mr. Spaccia's request that the court disregard her failure to comply with the
3 provisions of the Section 11514, based on asserted "good cause" also fails. There is
4 not a good cause exception to the specific and express requirements to section 11514.
5 Even if such an exception did exist, Spaccia has failed to establish facts to support a
6 finding of good cause for her late delivery of the affidavit. In his declaration in support
7 of the claim for good cause, Mr. Braun, concedes that he was aware of the purported
8 testimony "for years" and that he had been in discussion with the affiant for months.
9 (Dec. Braun, pp. 3-4, ¶¶ 5.) Further, he states that "we" (presumably his office)
10 received the document on December 14, 2012, but did nothing for the next three days
11 to deliver it to CalPERS or the City. (Dec. of Braun, p. 4., ¶ 10.)

12 Accordingly, the affidavit should not be rejected and not received for any
13 purpose. CalPERS and/or more probably the City of Bell will require cross examination
14 of Mr. Albright which may necessitate further time to procure and provide rebuttal
15 testimony, necessitating a further continuance of this proceeding. In addition, to the
16 failure to comply with the proper procedural requirements, and apparent lack of
17 relevancy to the issues in this case, and the potential need for additional time to rebut
18 the assertions made in the affidavit, CalPERS requests that it be denied admission as
19 being irrelevant. (Evid. Code § 352; Gov't Code § 11513, subd. (c),(f).)

20 III

21 **THE PROFFERED AFFIDAVIT IS IRRELEVANT TO THE ISSUE BEFORE THIS**
22 **COURT AND IF RELEVANT WOULD CONSTITUTE IMPROPER OPINION**
TESTIMONY

23 (a) The affidavit consists of Improper and Irrelevant Opinion Testimony.

24 A lay witness may testify in the form of an opinion, but only as to those matters
25 permitted by law and which are based on the witnesses' own personal knowledge and

1 which would be helpful to a clear understanding of the witnesses' testimony. (Evid.
2 Code §800, subd. (a), (b).) However, such testimony may not be based on facts made
3 known to the witness by others. (*Stuart v. Dotts* (1949) 89 Cal.App.2d 682, 637.)
4 Nor may such a witness testify in the form of an opinion "interpreting such relationships
5 as employment or agency and such issues as authority, control, or the existence of a
6 contract when such matters are at issue." (See, Heafey, California Trial Objections (8th
7 ed., 2000), §20.3, p. 209, citing, *Parker v. Otis* (1900) 130 Cal. 322; regarding
8 "delegation of authority"; *People v. Ware* (1924) 67 Cal.App. 81, regarding issues of
9 control.)

10 The proffered testimony in both Mr. Albright's and Mr. Braun's declarations
11 consist almost entirely to legal impressions and interpretation of a referenced
12 resolution or matters which they are merely offering their opinion and conjecture. AS
13 to the former, such evidence has been is universally disfavored and avoided.
14 (*Summers v. Gilbert* (1999) 69 Cal.App.4th 1155, held improper, admission of
15 attorney's testimony offered to provide his opinions regarding such matters
16 *nondelegable duty*, negligent *hiring* of an incompetent contractor; and doctrine of
17 *respondent superior*, *Carter v. City of Los Angeles* (1945) 67 Cal.App.2d 524, 528, "[It]
18 is thoroughly established that experts may not give opinions on matters which are
19 essentially within the province of the court to decide.]¹

20
21 "As a general rule, an expert witness may not give his opinion on a question of
22 domestic law or on matters which involve questions of law...an expert may not
testify as to such questions of law as the interpretation of a statute, an ordinance
or municipal code, administrative rules and regulations or case law, or the
legality of conduct." (underlining added.)

23 (31A Cal.Jur.3d, Evidence, §623, p. 211 See also, 32 C.J.S., Evidence §634.)
24

25 ¹ *Sheldon Appel Co. v. Albert & Oliker* (1989) 47 Cal.3d 863; See also accord *L.A. Teachers Union v. L.A. City Bd. of Ed.* (1969) 71 Cal.2d 551, 556.

1 Even though it may involve a question of fact, matters concerning the
2 interpretation of law, including interpretation of statutes and written agreements are
3 considered questions of law, and not subject to expert testimony (*Kahn v. East Side*
4 *Union High School* (2003) 31 Cal.4th 990.) In *Summers, supra*, the court took extreme
5 exception to the trial court's denial of a motion *in limine* which resulted in the admission
6 of plaintiff's legal expert opinion based on plaintiff's assertion that the testimony would
7 only be offering "a factual opinion based on the evidence made known to [the attorney]
8 and his understanding of California Law."

9 The court *Summer* cited with approval the decision in *Downer v. Bramet*
10 (1984) 152 Cal. App. 3d 837, 839-842, which held that the trial court properly
11 excluded testimony by attorneys which included matters of law, stating:

12 ". . . The cited rule [ultimate issue] does not, however, authorize an
13 'expert' to testify to legal conclusions in the guise of expert opinion. *Such*
14 *legal conclusions do not constitute substantial evidence. The*
manner in which the law should apply to particular facts is a legal
question and is not subject to expert opinion. (emphasis supplied.)

15 The same proscription applied to interpretation of law also applies to testimony
16 offered as to the meaning and effect of contracts and other written agreements.
17 (*Cooper Companies v. Transcontinental Ins. Co.* (1995) 31 Cal. App. 4th 1094,
18 1100; accord, *Devin v. United Services Auto. Assn.* (1992) 6 Cal. App. 4th 1149, 1158,
19 fn. 5.)

20 "Our Supreme court long ago established [t]he interpretation of a written
21 instrument, even though it involves what might properly be called questions of
22 fact, is essentially a judicial function to be exercised according to the
generally accepted canons of interpretation ... It is therefore solely a judicial
function to interpret a written instrument unless the interpretation turns upon the
credulity of extrinsic evidence... "

23 (*Morrow v. Los Angeles Unified School District* (2007) 149 Cal.App.4th 1424, 1445-
24 1446, internal citations omitted.)

1 In *Marx & Co., Inc. v. Diners' Club, Inc.*, *supra*, 550 F.2d 505, the plaintiffs
2 brought suit claiming the defendant engaged in securities fraud and breached its
3 contractual obligation to register stock received by plaintiffs. A primary issue at trial
4 was whether the defendant breached its contractual obligation to use its best efforts to
5 register the plaintiffs' stock. (*Id.* at p. 506.) The appellate court held that the trial court
6 erred in allowing even a lawyer-witness to testify concerning his conclusions as to the
7 legal significance of various facts adduced at trial. The court found:

8 "[S]uch testimony 'amounts to no more than an expression of the [witness's]
9 general belief as to how the case should be decided.' The admission of such
10 testimony would give the appearance that the court was shifting to witnesses the
11 responsibility to decide the case. It is for the jury to evaluate the facts in the light
12 of the applicable rules of law, and it is therefore erroneous for a witness to state
13 his opinion on the law of the forum." (*Ibid.*, *emphasis added.*) The Court of
14 Appeal finally concluded that the expert witness "*was advocating, not testifying.*
15 *In essence, cloaked with the impressive mantle of 'expert,' [the witnesses] made*
16 *plaintiffs' closing argument from the witness stand. This is a misuse of expert*
17 *witnesses, and renders his testimony inadmissible under Evidence Code section*
18 *801."* (*emphasis added.*)

14 In this case, the proffered testimony of Mr. Albright, relates almost entirely to his
15 impressions and interpretations of The City of Bell Charter (Declaration of Albright, p. 1
16 ¶ 4) and City of Bell, Resolution 2006-42 (*id.*, at p. 1-2, ¶¶ 6-10.) It also appears that
17 Albright may not have drafted the resolution nor may have personal knowledge of what
18 transpired at the July 31, 2006 City Council meeting. The proffered testimony of Mr.
19 Albright is inadmissible for any purpose, even as administrative hearsay. Similarly, the
20 declaration of Mr. Braun's declaration, specifically paragraphs 2 and 4 must be
21 excluded as improper opinion and paragraphs 5, the last sentence in paragraphs 6 and
22 8, on the grounds that the declarant lacks apparently lacks personal knowledge and is
23 simply stating his speculation.

1 (b) The Proffered Evidence Is Not Relevant To Any Issue In This Case.

2 In order to be relevant, evidence must have some probative value. (Evid. Code
3 § 210.) The Proffered testimony consisting of only improper and inadmissible opinion
4 testimony as to his interpretation of the subject resolution is not probative of the
5 meaning or application of the provision itself, let along any other issue in this case. As
6 this court and the Board previously determined in the matter, *In re the Matter of Randy*
7 *Adams*, whether the CAO did or did not have authority to enter into the employment
8 agreements, is irrelevant to question of whether the remuneration paid to the employee
9 qualifies as compensation earnable under the Public Employees Retirement Law.
10 (See, pp. 11-12, ¶ 23, p. 21 ¶ 18.)

11 Referencing, *Prentice v. Board of Admin., California Public Employees'*
12 *Retirement System* (2007) 157 Cal.App.4th 983, 994-995, the Board, *In Re Matter of*
13 *Randy Adams*,² (OAH No. 2012030095) stated "a written employment agreement with
14 an individual employee should not be used to establish that employee's "compensation
15 earnable" (Adams, at p. 20, ¶ 15.)³

16 "Applicants counsel suggested, through Ms. Spaccia's testimony and through
17 the introduction of Resolution 2006-42 [footnote8 -omitted], that CAO Rizzo
18 possessed the legal authority to enter into a binding employment agreement
19 with Mr. Adams on behalf of the City of Bell because the agreement involved
20 "the acquisition of ..., labor, services or other items included in the budget
approved by the City Council.

21 ... While it might be established somewhere else that the employment
22 agreement signed by CAO Rizzo was valid and binding upon the City of Bell,
23 that conclusion need not be reached in this proceeding."

24 ² Official Notice has been separately requested pursuant to Gov't Code § 11515.

25 ³ "Because, as we view the entire statutory scheme, the limitations on salary are designed to require that retirement benefits be based on the salary paid to similarly situated employees, PERS acted properly in looking at the published salary range rather than 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 additional compensation to a particular individual without making the compensation available to other similarly situated employees." (*Prentice v. Bd. of Administration, supra*, 197 Cal.App.4th at p. 994.) The same rational applies here as in Adams, that because Spaccia was paid not pursuant to a pay schedule, but pursuant to a unique series of individual employment agreements. .

1 (id., at pp. 11--12, ¶ 23.)

2 Accordingly, testimony regarding to the interpretation or application of
3 Resolution 2006-42 are irrelevant to the issues in this case. Even if the CAO had such
4 authority, it is not determinative of the issue compensation earnable or the propriety of
5 the ARSC issue. Further, if admitted for any purpose, the rebuttal of such testimony by
6 either the City and/or CalPERS would consume a disproportionate amount of time to
7 the limited probative value of the testimony, notwithstanding the possible need for
8 further hearings dates to procure and present rebuttal testimony. (Gov. Code § 11513,
9 subds (c), (f); Evid. Code § 352.) .)

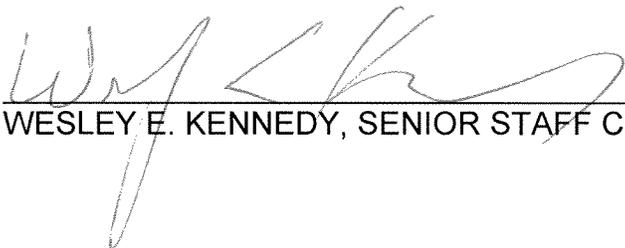
10 **IV**

11 **CONCLUSION**

12 For the reasons stated above, CalPERS request the court rule that the proffered
13 affidavits be excluded and not be allowed introduction into evidence for any purpose.

14
15 **BOARD OF ADMINISTRATION, CALIFORNIA
PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

16
17 Dated: December 20, 2012

18 
19 _____
20 WESLEY E. KENNEDY, SENIOR STAFF COUNSEL

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 December 20, 2012, I served the foregoing document described as:

CALPERS' OBJECTION MOTION TO DECLARATION OF CLIFTON WADE ALBRIGHT, ESQ. AND HARLAND W. BRAUN, ESQ. - In the Matter of the Calculation of Final Compensation 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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Executed on December 20, 2012, 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

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4 Attorney for Respondent
5 **PIER' ANGELA SPACCIA**

6
7
8 **BOARD OF ADMINISTRATION**
9 **CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT TRUST**

10
11
12 In the Matter of the Calculation of
Final Compensation:)

CASE NO. 2011-0789
OAH NO. 2012020198

13 **PIER' ANGELA SPACCIA,**
14 Respondent,

) **RESPONDENT PIER' ANGELA**
) **SPACCIA'S RESPONSE TO CALPERS**
) **REQUEST FOR OFFICIAL NOTICE**
) **[GOVERNMENT CODE § 11515] OF**
) **THE DECISION IN THE MATTER OF**
) **RANDY ADAMS, CASE NO. 2011-0788**

15 and

16
17 **CITY OF BELL,**
18 Respondent.

) **Hearing Date: December 27-28, 2012**
) **Time: 9:00 a.m.**
) **Location: Orange**
) **ALJ: James Ahler**

19
20 **INTRODUCTION**

21 CalPERS requested that the Court take judicial notice of the decision in the
22 Matter of Randy G. Adams, case no. 2011-0788, OAH no. 2012030095, because
23 CalPERS believes that the decision in the Randy Adams case has relevance to the issues
24 in the matter of Pier' Angela Spaccia's calculation of final compensation.

25 CalPERS is correct that some of the reasoning in the Adams case is relevant to
26 the calculation in Pier' Angela Spaccia's case. Ms. Spaccia believes that the difference
27 between her status and Randy Adams' status could be usefully considered in her matter.
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Employment

Pier'Angela Spaccia was employed by the City of Bell from 2003, and she retired on July 31, 2010. Pier'Angela Spaccia was an employee and not a department head. As Assistant to and the Assistant Chief Administrative Officer Ms. Spaccia was assigned special duties when particular problems or projects occurred.

Estoppel

As an employee of the City of Bell, Pier'Angela Spaccia relied on the City of Bell, its attorneys, as well as CalPERS to assure that the CalPERS pension on which she relied was legally compliant. At no time while Pier'Angela Spaccia was employed at the City of Bell did any personnel from the City of Bell or its employees raise any issue with respect to the validity of her pension. Nor did anyone at the City of Bell ever raise any issue as to whether her salary was to be used in the calculation of her CalPERS pension.

Randy Adams did not rely on CalPERS or the City of Bell. Adams' demand that his Bell salary be "persable" shows a sophistication about compensation calculations which preclude him from claiming Bell or CalPERS impliedly misrepresented the validity of his extraordinary demand that his lifetime pension be doubled for a years work at Bell.

In 2006, CalPERS visited the City of Bell and conducted a thorough review of the City of Bell's CalPERS pension compliance. Based on this audit, CalPERS issued a report which is Exhibit 7 of Pier'Angela Spaccia's exhibits at the previous hearing. In that report, CalPERS never questioned whether Pier'Angela Spaccia's or anyone else's pay was "compensation earnable" under the appropriate statutes and regulations. In the 2006 CalPERS report, CalPERS never raised any issue about whether the salaries of any of the employees or public officials at the City of Bell were "publicly available" under the applicable regulations and statutes.

Had Pier'Angela Spaccia been notified of any of these possible deficiencies by the City of Bell or CalPERS, she would have either taken action to demand compliance

1 to protect her pension, or left the employment of the City of Bell to work at a
2 government agency that was in full compliance with the CalPERS regulations. At all
3 times while she worked at the City of Bell she reasonably relied on the City of Bell and
4 CalPERS for the assurance that her pension as represented to her was legally compliant
5 and safe.

6 CalPERS Treatment of Other Bell Retirees

7 While Pier'Angela Spaccia worked at the City of Bell, she observed CalPERS
8 treatment of a half dozen retirees, all of whom had single contracts based on the same
9 template as hers. Ms. Spaccia observed Dennis Tavernelli, David Reed, Andreas Probst,
10 Sergio Camacho, and Michael Chavez retire from the City of Bell with the identical
11 CalPERS program. CalPERS treated their income from the City of Bell, which was in
12 an identical form as Ms. Spaccia's, as compensation earnable. To the present date, Ms.
13 Spaccia is unaware of CalPERS challenging any of these retirees claiming that the salary
14 that they received at the City of Bell did not qualify as "compensation earnable."

15 Had CalPERS contested any one of these retirees, Ms. Spaccia would have taken
16 action to protect her pension and assure herself that it qualified under the new
17 interpretation by CalPERS.

18 Subsequent to Ms. Spaccia's retirement, CalPERS has allowed Annette Peretz
19 and Luis Ramirez, also employees of the City of Bell who were employed under
20 identical circumstances as Ms. Spaccia to retire without any objection that their salaries
21 did not qualify as compensation earnable.

22 Robert Rizzo's Authority with Respect to

23 Pier'Angela Spaccia's Employment Agreements

24 An important distinction between Randy Adams and Pier'Angela Spaccia is who
25 in the Bell city government can authorize employment agreements. Section 519 of the
26 City Charter allows the City Council by resolution to authorize the Chief Administrative
27 Officer [CAO] to bind the City for the acquisition of equipment, materials, supplies,
28 labor, services or other items included within the budget approved by the City Council.

1 However, Section 604(a) limits authorization under Section 519 because it provides that
2 “the Chief Administrative Officer shall first review such appointment or removal [of
3 department heads] with the City Council and obtain its approval.”

4 Rizzo interpreted Section 604 to mean that all he need do was discuss the hiring
5 of Randy Adams with various City Council members, focusing on the word “review”
6 and ignoring the fact that he was required to obtain from the City Council its approval.
7 A reasonable reading of Section 604 is that the City Council as a whole had to approve
8 the appointment of Randy Adams.

9 Unlike Randy Adams, the employment agreement of Pier’Angela Spaccia could
10 be approved by Chief Administrative Officer Robert Rizzo without the approval of the
11 City Council. The distinction between a regular employee and a department head is
12 critical.

13 The Declaration of Clifton Albright explains that Resolution 2006-42 clarified
14 the distinction between Section 519 and Section 604. Section 519 required a resolution
15 of the City Council authorizing the Chief Administrative Officer, whereas Section 604
16 apparently did not. In an abundance of caution, Clifton Albright wrote Resolution 2006-
17 42 to remove any doubt about Robert Rizzo’s authority.

18 Pier’Angela Spaccia was informed that there was some ambiguity in the authority
19 of Robert Rizzo, and was told that a resolution was to be passed clarifying Robert
20 Rizzo’s authority. Pier’Angela Spaccia reasonably relied on Resolution 2006-42, as
21 well as the information given to her by Robert Rizzo.

22 Spiking

23 The Court’s decision in the Adams case discusses the fact that Government Code
24 Section 20636 was specifically designed to curb “spiking” which is the intentional
25 inflation of final compensation causing unfunded pension liabilities for CalPERS.

26 Randy Adams’ claimed pension, if allowed, would have been probably the most
27 egregious example of spiking in the history of CalPERS pensions. When Randy Adams
28 retired from the City of Glendale, he would have received a CalPERS pension of

1 \$258,175.28, and still would have been one of the highest pensions of retired public
2 employees in the State of California. In a scheme designed to spike his pension, Randy
3 Adams demanded that the City of Bell, rather than employing him as a consultant, must
4 employ him as an employee requiring 'persable' compensation. This would have
5 resulted in Randy Adams' yearly pension jumping from \$258,175.28 to \$510,270.60 per
6 year. Under this scheme, Randy Adams would have doubled his pension by working
7 only one year at the City of Bell.

8 The only reasonable arrangement for Randy Adams to work at the City of Bell
9 would have been to take his CalPERS quarter million dollar pension and then be
10 employed by the City of Bell as a consultant rather than as an employee. This
11 arrangement would have given Adams the same income while he worked at the City of
12 Bell, saved the City of Bell a quarter of a million dollars a year, and not bankrupted the
13 CalPERS system.

14 The issue of whether Pier'Angela Spaccia's salary constitutes compensation
15 earnable under Government Code Section 20636 does not involve any issue of spiking.
16 There is not even any claim that her salary was increased for spiking purposes.
17 Therefore, the legislative rationale for Government Code Section 20636 does not apply
18 to the case of Pier'Angela Spaccia.

19 Public Availability

20 CalPERS claims that Pier'Angela Spaccia's employment contract was not
21 publicly available under Government Code Section 20636. The Court explained in the
22 Randy Adams decision that Section 570.5, Title 2 of the California Code of Regulations
23 became operative August 10, 2011. Pier'Angela Spaccia retired on July 31, 2010. Ms.
24 Spaccia never had any information about the definition of publicly available pay
25 schedules under Government Code Section 20636, and would not have even been able
26 to predict that a year after she retired that a new regulation would be passed defining
27 public availability.

28 The CalPERS audit of 2006 examined the Bell pay schedules, in which Ms.

1 Spaccia's position referred expressly to another document. The audit report raised no
2 issue of public availability.

3 The fact is that the employment contract of Pier'Angela Spaccia was readily
4 available to the public. Ms. Spaccia's employment contract was contained in her
5 personnel file which was publicly available. Former City Attorney Ed Lee testified at
6 the previous hearing that her employment contract was readily available.

7 The L.A. Times requested that the City Clerk produce Pier'Angela Spaccia's
8 employment agreement on July 6, 2010, and her employment agreement was delivered
9 to the L.A. Times by July 9, 2010. Ms. Spaccia's employment agreement was delivered
10 physically to the L.A. Times faster than if it had been mailed the very day that the
11 request had been received by the City of Bell.

12 The District Attorney of Los Angeles requested Pier'Angela Spaccia's personnel
13 file and it was delivered almost instantly, unlike Randy Adams' employment contract
14 which was delayed. A copy of that file which was received by the District Attorney in
15 2010 was made available to Pier'Angela Spaccia through criminal discovery in 2011. A
16 copy of the full file which contains the employment agreement of Pier'Angela Spaccia
17 will be produced at the hearing, showing without any doubt that Pier'Angela Spaccia's
18 employment agreements were not missing from her personnel file.

19 Creation of Fake Contracts

20 The Court concluded in the Randy Adams decision that his contract was not
21 readily available to the public. The Court also noted that Randy Adams participated in
22 the creation of two fake contracts to be used to deceive the public about his salary. The
23 decision did not focus specifically on this criminal conduct by Randy Adams in signing
24 backdated contracts, but the fact that fake contracts were used to deceive the public
25 means that his real contract was not readily available to the public.

26 The fake contracts by Randy Adams were created by Lourdes Garcia and
27 Rebecca Valdez, both of whom received use immunity from the District Attorney in
28 order to testify about their criminal conduct. Obviously Randy Adams also participated

1 in this conduct knowing full well that these documents would be used in response to a
2 public records request.

3 There is absolutely no evidence that Pier'Angela Spaccia participated in the
4 creation of the fake contracts for Randy Adams, or the five fake contracts created for
5 Robert Rizzo. Implicit in the Adams decision is the logic that one cannot claim that
6 one's employment contract is publicly available while at the same time creating fake
7 contracts to deceive the public.

8 Ms. Spaccia's Participation in the Adams Negotiation

9 Pier'Angela Spaccia has received serious criticism and bad publicity regarding
10 her participation in the Randy Adams negotiation. In the Adams decision, the Court
11 correctly concludes that, although Pier'Angela Spaccia participated mechanically in the
12 negotiations, she was not directly involved in the negotiations that resulted in Adams
13 becoming employed at the City of Bell.

14 The reason the Court was able to accurately gauge Pier'Angela Spaccia's
15 involvement in the negotiation was because Pier'Angela Spaccia made available to the
16 Court the original demand by Randy Adams for his employment at the City of Bell.
17 This demand and the response of Robert Rizzo set the parameters of the negotiations for
18 which Pier'Angela Spaccia bore no responsibility. Unfortunately, this critical initial
19 demand by Randy Adams was withheld from the Grand Jury which indicted Ms.
20 Spaccia, and the preliminary hearing magistrate who unfairly criticized Ms. Spaccia's
21 involvement in the Adams negotiations.

22 Pier'Angela Spaccia does disagree slightly with the Court's findings regarding
23 the Randy Adams negotiations, however, this disagreement does not involve the
24 calculation of her final compensation. From Ms. Spaccia's perspective, there was
25 secrecy in the recruitment of Adams because Rizzo was attempting to bring in a well-
26 respected outsider into the City of Bell as the chief of police in order to reform the
27 police department and avoid what had become serious civil liabilities resulting from
28 police misconduct. Rizzo knew that members of the police department would resist an

1 outsider and would attempt to go directly to the City Council to thwart his plans. From
2 Ms. Spaccia's perspective, this initial secrecy was necessary and justified given Mr.
3 Rizzo's perspective.

4 However, once the Adams contract was signed, the contract itself was turned
5 over to the City Clerk Rebecca Valdez. Ms. Spaccia knows this for a fact because she
6 physically handed the Randy Adams contract to City Clerk Rebecca Valdez. Thereafter,
7 Ms. Spaccia has no knowledge of whether the contract was withheld from Adams'
8 personnel file, held by Rizzo at his desk drawer, or where the contract was kept. The
9 Court also noted that the documents involving Randy Adams were to be filed separately
10 in various departments and interpreted this to be an attempt at secrecy.¹ From Ms.
11 Spaccia's perspective, the employment contract itself should have been available in
12 Adams' personnel packet which would have been readily available to the public. The
13 consulting agreement for prior work would be in accounts payable, not in his personnel
14 packet, because it was not evidence of his current salary. The vehicle indemnification
15 was an insurance matter which should have been in the insurance file, and the issue of
16 Adams' workers compensation eligibility from Ventura was really a matter between Mr.
17 Adams and previous employers. Again however, none of this bears on Ms. Spaccia's
18 calculation of her final compensation.

19 The most important fact about Pier'Angela Spaccia's participation in the Randy
20 Adams negotiation is that it is irrelevant to the calculation of her final compensation.
21 Even assuming that there was wrongdoing by Pier'Angela Spaccia, which she denies,
22 her pension does not depend on her conduct with respect to the Randy Adams contract.
23 The unfortunate e-mails, as well as the extraordinary pay of Randy Adams, has created a
24

25 ¹ The Court commented that assigning the mundane task of physically creating the Randy
26 Adams contract to Pier'Angela Spaccia was part of the attempt to keep it secret. But, historically,
27 Rizzo assigned the physical preparation of the contracts using the City of Bell template to Pier'Angela
28 Spaccia for internal control purposes. In other words, he did not want the same person producing the
physical contracts that would be funding the salary. Separating the production of contracts from the
fiscal department was an internal safeguard.

1 firestorm of publicity regarding the negotiation. However, there was no provision in
2 her CalPERS pension that any wrongdoing by Pier'Angela Spaccia could deprive her of
3 her pension.

4 The Randy Adams Decision is Unique

5 The Randy Adams decision involved an employment contract so unique its logic
6 will not affect any other retired or current Bell employee. The decision in Ms. Spaccia's
7 calculation will necessarily affect many other employees and retirees because a finding
8 that her employment contract was disqualified as compensation earnable would apply
9 logically to every Bell employee with an individual contract, whether current or retired.
10 A finding that a municipality cannot purchase additional retirement service credits could
11 affect at least a dozen Bell city employees, some of whom are already retired.

12 Such a decision would require CalPERS to then challenge the retirement of every
13 employee in the State of California whose contract did not technically comply with
14 Government Code § 20636, and whose additional retirement service credits were paid
15 by the employer. These employees, like Ms. Spaccia, had no knowledge that the
16 pensions on which they relied were open to challenge.

17 18 CONCLUSION

19 Pier'Angela Spaccia's case is rather straightforward once one understands the
20 fact that the publicity surrounding the City of Bell is not relevant. Ms. Spaccia was a
21 seven-year employee of the City of Bell who relied on the City of Bell and CalPERS for
22 the assurance that her pension which she believed she was earning was lawful.

23 Pier'Angela Spaccia's pay in no way involved spiking, and there is no issue that
24 her contract had to be approved by the City Council given the rationale, language, and
25 purpose of Resolution 2006-42, and the City Charter.

26 Pier'Angela Spaccia's employment contract was publicly available as testified to
27 by City Attorney Ed Lee, as demonstrated by the production of her contract to the Los
28 Angeles Times within three days, as well as the fact that it was inside the file obtained

1 by the District Attorney's Office in July 2010.

2 Moreover, with respect to the legal compliance of her CalPERS pension, she
3 relied on the City of Bell and CalPERS itself.

4 Respectfully submitted,

5
6 Date: December 20, 2012

Harland W. Braun

HARLAND W. BRAUN
Attorney for Respondent
ANGELA SPACCIA

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PROOF OF SERVICE

1
2
3 I am a citizen of the United States and a resident of the County of Los Angeles; I
4 am over the age of eighteen years and not a party to the within entitled action; my
5 business address is 1880 Century Park East, Suite 710, Los Angeles, California.

6 On December 21, 2012, I served the within document entitled

7
8 RESPONDENT PIER' ANGELA SPACCIA'S RESPONSE TO
9 CALPERS REQUEST FOR OFFICIAL NOTICE [GOVERNMENT
10 CODE § 11515] OF THE DECISION IN THE MATTER OF RANDY
ADAMS, CASE NO. 2011-0788

11 on the interested parties in said action, by transmitting a true copy thereof as follows:

12
13 Office of Administrative Hearings
14 1350 Front Street, Suite 3005
San Diego, CA 92101
By E-mail: sanfilings@dgs.ca.gov
15 By Fax: (916) 376-6325

16 Wesley E. Kennedy, Esq.
17 California Public Employees' Retirement System
P.O. Box 942707
18 Sacramento, CA 94229-2707
By E-mail:
By Fax: (916) 795-3659

19 Stephen Onstot, Esq.
20 Aleshire & Wynder LLP
18881 Von Karman Ave., Suite 1700
21 Irvine, CA 92612
By E-mail: sonstot@awattorneys.com

22
23 I declare, under penalty of perjury, that the foregoing is true and correct.

24 Executed this 21st day of December, 2012, at Los Angeles, California.

25
26 
27 JANUARY KING

PRINT TIME 12/21 '12 11:44 ID:* BRAUN *

FAX:0 277 4045 277 2270

TIMER---:--

FILE No.	START TIME	MODE	LOCATION	STORE PAGE	TX/RX PAGE	TOTAL TIME	CODE
248	12/21 11:37	TX	BRDCAST 19163766325	12	12/ 0	02'21"	OK
248	12/21 11:39	TX	BRDCAST 16195254419	12	12/ 0	02'24"	OK
248	12/21 11:42	TX	BRDCAST 19167953659	12	12/ 0	01'56"	OK

Law Offices
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FAX TRANSMISSION COVER SHEET

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TO:	Office of Administrative Hearings San Diego	FAX #:	916 / 376-6325
TO:	James Ahler, ALJ Office of Administrative Hearings	FAX #:	619 / 525-4419
TO:	Wesley Kennedy, Esq. CalPERS	FAX #:	916 / 795-3659
FROM:	Harland W. Braun, Esq.	DATE:	December 21, 2012
RE:	Pier'Angela Spaccia, Case No. 2011-0789 OAH No. 2012020198	no. of pages	12 Including cover sheet
Message:			
Respondent Spaccia's Response to CalPERS Request for Official Notice [Govt. Code § 11515] of the Decision in the Matter of Randy Adams			
Original sent:	<input type="checkbox"/> first class mail	<input type="checkbox"/> overnight	<input type="checkbox"/> not being sent

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2 Los Angeles, California 90067-1608
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4 Attorney for Respondent
5 **PIER'ANGELA SPACCIA**

6
7
8 **BOARD OF ADMINISTRATION**
9 **CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT TRUST**

11 In the Matter of the Calculation of
Final Compensation:

12 **PIER'ANGELA SPACCIA,**

13 Respondent,

14 and

15
16 **CITY OF BELL,**

17 Respondent.

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

) **RESPONDENT SPACCIA'S REPLY**
TO CALPERS' OBJECTION TO THE
DECLARATION OF CLIFTON WADE
ALBRIGHT, ESQ.

) **Hearing Date: December 27-28, 2012**
Time: 9:00 a.m.
Location: Orange
ALJ: James Ahler

18
19 Respondent Spaccia believes that CalPERS' objections to the Declaration of
20 Clifton Albright, Esq. are correct in part, and incorrect in part. Respondent Spaccia
21 believes that the controversy over whether Albright's declaration is admissible to
22 explain Resolution No. 2006-42 clarifies one of the central issues in the calculation of
23 her final compensation.

24 Interpretation of Statutes, Municipal Codes, and Resolutions

25 CalPERS asserts that the Declaration of Clifton Albright is unnecessary because
26 such matters are almost always in the exclusive purview of the Court. Spaccia agrees.
27 The interpretation of the inter-relationship between Resolution No. 2006-42, and
28 Sections 519 and 604 of the City Charter are questions of law for the Court.

1 Clifton Albright could be a competent witness to the fact that the resolution was
2 presented to the City Council, discussed by the City Council, and approved by the City
3 Council. However, CalPERS apparently does not contest these facts.

4 The purpose for the potential Albright declaration or testimony is found in the
5 CalPERS objection at page 2, lines 8-11, where it categorizes the resolution as “[A]
6 resolution for the City granting the Chief Administrative Officer unilateral authority to
7 enter into exorbitant employment agreements, including that of Ms. Spaccia, without
8 review or consent of the City Council (no less the public.)”

9 Legal Analysis

10 Bell’s City Charter Section 519(a) [Exhibit A] provides in paragraph 2 that “the
11 City Council by resolution may authorize the Chief Administrative Officer to bind the
12 City for the acquisition of equipment, material, supplies, labor, services or other items
13 included within the budget approved by the City Council” (emphasis added.)

14 City Charter Section 604(a) [Exhibit B] apparently gives the CAO the power to
15 appoint, promote, demote, employees of the City of Bell with some exceptions.
16 However, Section 604(a) requires that the appointment or removal of department heads
17 is subject to the approval of the City Council.

18 There is an obvious potential conflict between Section 519 declaring that the City
19 shall not be bound by any contract except approved by the City Council, and Section
20 604(a) which gives the Chief Administrative Officer the power to hire and remove
21 employees with exceptions.

22 Pursuant to paragraph 2 of Section 519, the City Council passed Resolution No.
23 2006-42 [Exhibit C] which as CalPERS argues, should be interpreted only on basis of
24 the written words.

25 Ms. Spaccia agrees. The only reasonable interpretation of Section 519, Section
26 604, and Resolution No. 2006-42 is that Robert Rizzo can hire, fire and promote using
27 written contracts, employees except for department heads whose appointment or
28 removal must be approved by the City Council.

1 Resolution No. 2006-42 has several limitations. The limitations most pertinent to
2 this case are that the hiring must be "included within the budget approved by the Bell
3 City Council" and that the hiring be in writing. Section 519 potentially could have
4 allowed the Chief Administrative Officer to bind the City "with or without a written
5 contract," but Resolution No. 2006-42 limits Rizzo's authority to a written contract.

6 For the purpose of the orderly and efficient running of the City, it does not appear
7 to be unreasonable for the City Council to approve the City Budget, and then allow the
8 CAO to hire and fire within the city budget, and yet reserve to itself the power to
9 appoint or remove department heads who are the main administrative officers of the
10 City.

11 Without such a resolution, every employment contract and contract for goods or
12 services would have to be individually approved by the City Council. The fact that the
13 City Council did not fully delegate the authority to the CAO to bind the City "without a
14 written contract" and the fact that hiring must be included in the budget are significant
15 limitations.

16 CalPERS' Interpretation of Resolution No. 2006-42

17 CalPERS claims that Resolution No. 2006-42 granted Rizzo "unilateral
18 authority" to enter into "exorbitant employment agreements . . . without review or
19 consent of the City Council (no less the public.)"

20 The resolution does not grant the CAO unilateral authority because he must hire
21 and fire within the City Budget and his authority must be exercised only by a written
22 document. Moreover, the claim that the resolution authorizes "exorbitant employment
23 agreements" is misleading because the City Council itself has to approve the budget
24 within which the CAO operates.

25 The claim by CalPERS that the salary might be "exorbitant" is rhetorical because,
26 as CalPERS itself concedes, it does not have the power, purview, or purpose to regulate
27 salary levels within its member municipalities. This regulation is a political matter left
28 to the governing bodies of the municipalities.

1 The statement that an employment contract could be entered into without review
2 or consent of the City Council is misleading because the budget within which the CAO
3 operates is approved by the City Council. The purpose of Resolution No. 2006-42 is to
4 allow the CAO to operate without being micro-managed.

5 The parenthetical statement "no less the public" is again rhetorical. When the
6 City Council delegated to the CAO the power to enter into written employment contracts
7 within the budget, there is no public procedure. The procedure is for the public to
8 review, if it wishes, the employment contracts and takes its agreement or grievances up
9 with the City Council.

10 If CalPERS' interpretation were to be correct, a City Council could not delegate
11 authority to the CAO to enter into contracts included within the City Budget and the City
12 Council would be required to individually consider every employment contract and
13 contract for services in a public hearing without regard to how significant were the
14 contracts.

15 The Use of Legislative History

16 CalPERS objects to the use of the Declaration of Clifton Albright because the
17 declaration explains a resolution which should be interpreted from the face of the charter
18 and the resolution.

19 CalPERS, however, when it is convenient, takes an entirely different approach
20 when it denied Ms. Spaccia her five years of additional retirement service credit.

21 For example, in its June 6, 2012, letter denying her five years of ARSC credit
22 [Exhibit D], CalPERS in page 2, footnote 2, states:

23
24 For example, the Senate Floor Analysis accompanying Assembly
25 Bill 719 (the bill that implemented section 20909 in 2003) explained:
26 "[T]he cost of [ARSC] will be fully paid by the member, with no employer
27 contribution permitted."

28 CalPERS apparently is denying many retirees additional retirement service credit
based on a statement in a legislative analysis to AB 719 which mistakenly uses the word
'permitted' when it should have been 'required.'

1 Conveniently, CalPERS ignores the language of the statute and argues that a
2 single word from a legislative analysis, never used in the statute controls the
3 interpretation of the statute.

4 In an attempt to trace down the use of the word "permitted," counsel for Spaccia
5 contacted the consultant, Mr. Felderstein, to determine the accuracy and source of his
6 use of the word "permitted" in his analysis of AB 719 which became Government Code
7 Section 20909(a). Attached to this reply are the e-mails from counsel to Felderstein
8 [Exhibit E].

9 CONCLUSION

10 If the Court believes that the interpretation of the Charter and Resolutions is a
11 matter for the Court exclusively, then the testimony of Clifton Albright would be
12 unnecessary.

13 With respect to the legislative history of Government Code Section 20909(a), the
14 Court should disregard any reference to the casual use of a single word in an analysis by
15 a lone consultant in 2003.

16 Hopefully this reply will clarify the issues for the Court.

17 Respectfully submitted,

18
19 Date: December 21, 2012



HARLAND W. BRAUN
Attorney for Respondent
ANGELA SPACCIA

In the Matter of the Calculation of Final Compensation:
PIER ANGELA SPACCIA, Respondent, and CITY OF BELL, Respondent
CalPERS Board of Administration Case No. 2011-0789

RESPONDENT SPACCIA'S REPLY TO CALPERS'
OBJECTION TO THE DECLARATION
OF CLIFTON WADE ALBRIGHT, ESQ.

EXHIBIT A

EXHIBIT A

EXHIBIT A

of general circulation published in the City, the City Council, annually, prior to the beginning of each fiscal year, shall publish a notice inviting bids and contract for the publication of all legal notices or other matter required to be published in a newspaper of general circulation in the City during the ensuing fiscal year. In the event there is only one newspaper of general circulation printed and published in the City, then the City Council shall have the power to contract with such newspaper for the printing and publishing of such legal notices or matter without being required to advertise for bids therefor. The newspaper with which any such contract is made shall be designated the official newspaper for the publication of such notices or other matter for the period of such contract.

In no case shall the contract prices for such publication exceed the customary rates charged by such newspaper for the publication of legal notices of a private character.

In the event there is no newspaper of general circulation printed and published in the City, or in the event no such newspaper will accept such notices or other matter at the rates permitted herein, then all legal notices or other matter may be published by posting copies thereof in at least three public places in the City to be designated by ordinance.

No defect or irregularity in proceedings taken under this Section, or failure to designate an official newspaper, shall invalidate any publication where the same is otherwise in conformity with this Charter or law or ordinance.

Section 518. CONTRACTS. RESTRICTIONS. No contract or lease or extension thereof for a longer period than 55 years shall be valid unless said contract, lease or extension be made or approved by ordinance which shall be subject to referendum. This Section shall not apply to any franchise granted pursuant to the provisions of this Charter or to any contract for the furnishing, or acquisition of the products, commodity or services of any public utility.

Section 518. CONTRACTS. EXECUTION. The City shall not be bound by any contract, except as hereinafter provided, unless the same shall be made in writing, approved by the City Council and signed on behalf of the City by the Mayor, or in the absence of the Mayor, by the Vice Mayor, or by the Member of the City Council presiding at the meeting at which the contract is approved, or by such other officer or officers as shall be designated by the City Council, and attested by the City Clerk. Any of said officers shall sign a contract on behalf of the City when directed to do so by the City Council.

By ordinance or resolution the City Council may authorize the Chief Administrative Officer or authorized representative 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,

The City Council may by ordinance or resolution provide a method for the sale or exchange of real or personal property not needed in the City service or not fit for the purpose for which intended, and for the conveyance of title thereto.

Contracts for the sale of the products, commodities or services of any public utility owned, controlled or operated by the City may be made by the manager of such utility or by the head of the department or Chief Administrative Officer upon forms approved by the Chief Administrative Officer and at rates fixed by the City Council.

The provisions of this Section shall not apply to services rendered by any person in the employ of the City at a regular salary.

ARTICLE VI - CHIEF ADMINISTRATIVE OFFICER

Section 600. CHIEF ADMINISTRATIVE OFFICER. There shall be a Chief Administrative Officer who shall be the chief administrative officer of the City. The Chief Administrative Officer shall be appointed by the affirmative vote of at least a majority of all members of the City Council and shall serve at the pleasure of the City Council, provided, however, that the Chief Administrative Officer shall not be removed from the office except as provided in this Charter. The Chief Administrative Officer shall be chosen on the basis of executive administrative qualifications.

Section 601. RESIDENCE. The Chief Administrative Officer need not be a resident of the City at the time of appointment, but shall within 90 days after appointment, establish residence within such distance from

In the Matter of the Calculation of Final Compensation:
PIER' ANGELA SPACCIA, Respondent, and CITY OF BELL, Respondent
CalPERS Board of Administration Case No. 2011-0789

RESPONDENT SPACCIA'S REPLY TO CALPERS'
OBJECTION TO THE DECLARATION
OF CLIFTON WADE ALBRIGHT, ESQ.

EXHIBIT B

EXHIBIT B

EXHIBIT B

the City as the City Council may establish, unless such period is extended by the City Council, and thereafter maintain residence within such distance during tenure of office.

Section 602. ELIGIBILITY. No person shall be eligible to receive appointment as Chief Administrative Officer while serving as a member of the City Council nor within one year after ceasing to be a member of the City Council.

Section 603. COMPENSATION AND BOND. The Chief Administrative Officer shall be paid a salary commensurate with the responsibilities of chief administrative officer of the City. The Chief Administrative Officer shall furnish a corporate surety bond conditioned upon the faithful performance of duties in such form and in such amount as may be determined by the City Council.

Section 604. POWERS AND DUTIES. The Chief Administrative Officer shall be the administrative head of the City Government. Except as otherwise provided in this Charter, the Chief Administrative Officer shall be responsible to the City Council for the proper administration of all affairs of the City. Without limiting the foregoing general grant of powers, responsibilities and duties, subject to the provisions of this Charter, including the personnel system provisions thereof, the Chief Administrative Officer shall have power and be required to:

(a) Appoint, and may promote, demote, suspend or remove, all department heads, officers and employees of the City except elective officers and those department heads, officers and employees the power of whose appointment is vested by this Charter in the City Council. The Chief Administrative Officer may authorize the head of any department or office to appoint or remove subordinates in such department or office. In case of the appointment or removal of any department head, the Chief Administrative Officer shall first review such appointment or removal with the City Council and obtain its approval.

(b) Prepare the budget, submit to the City Council, and be responsible for its administration after its adoption.

(c) Prepare and submit to the City Council as of the end of each fiscal year, a complete report on the finances and administrative activities to the City for the preceding fiscal year.

(d) Keep the City Council advised of the financial condition and future needs of the City and make such recommendations as may seem desirable.

(e) Establish a centralized purchasing system for all City offices, departments and agencies.

(f) Prepare rules and regulations governing the contracting for purchasing, inspection, storing, inventory, distribution and disposal of all supplies, material and equipment required by ordinance, and administer and enforce the same after adoption.

(g) See that the laws of the State pertaining to the City, the provisions of this Charter and the ordinances, franchises and rights of the City are enforced.

(h) Exercise control of all administrative offices and departments of the City and of all appointive officers and employees except those directly appointed by the City Council and prescribe such general rules and regulations as deemed necessary or proper for the general conduct of the administrative offices and departments of the City under jurisdiction of the Chief Administrative Officer.

(i) Perform such other duties consistent with this Charter as may be required by the City Council.

Section 605. MEETINGS. The Chief Administrative Officer shall be accorded a seat at all meetings of the City Council and of all boards and commissions and shall be entitled to participate in their deliberations, but shall not have a vote. The Chief Administrative Officer shall receive notice of all special meetings of the City Council, and of all boards and commissions.

Section 606. ASSISTANT CHIEF ADMINISTRATIVE OFFICER. The City Council may direct the Chief Administrative Officer to appoint an Assistant Chief Administrative Officer.

If there is no Assistant Chief Administrative Officer and the position of Chief Administrative Officer becomes vacant or the Chief Administrative Officer is absent or is incapacitated to such an extent the Chief Administrative Officer cannot perform the duties of the office, then the Mayor, or if absent or unable to act, the Vice Mayor, or if absent or unable to act, the senior member of the City Council temporarily shall act as the administrative head of the City until the City Council fills the position of Chief Administrative Officer or appoints

In the Matter of the Calculation of Final Compensation:
PIER ANGELA SPACCIA, Respondent, and CITY OF BELL, Respondent
CalPERS Board of Administration Case No. 2011-0789

RESPONDENT SPACCIA'S REPLY TO CALPERS'
OBJECTION TO THE DECLARATION
OF CLIFTON WADE ALBRIGHT, ESQ.

EXHIBIT C

EXHIBIT C

EXHIBIT C

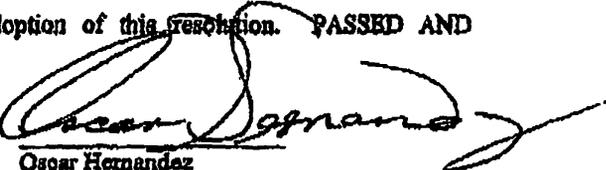
RESOLUTION NO. 2006-42
RESOLUTION OF THE CITY COUNCIL OF BELL IMPLEMENTING
SECTION 519 OF THE BELL CITY CHARTER PERTAINING TO
ACQUISITION OF LABOR OR SERVICE CONTRACTS

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

ATTEST:


Rebecca Valdez

I certify that the foregoing Resolution No. 2006-42 was adopted by the City Council of the City of Bell at a regular meeting held July 31, 2006, by the following vote:

AYES: Councilmembers Cole, Jacobo, Mirabal, Vice Mayor Bello and Mayor Hernandez

NOES: None

ABSTAIN: None

ABSENT: None


Rebecca Valdez
City Clerk

C

In the Matter of the Calculation of Final Compensation:
PIER'ANGELA SPACCIA, Respondent, and CITY OF BELL, Respondent
CalPERS Board of Administration Case No. 2011-0789

RESPONDENT SPACCIA'S REPLY TO CALPERS'
OBJECTION TO THE DECLARATION
OF CLIFTON WADE ALBRIGHT, ESQ.

EXHIBIT D

EXHIBIT D

EXHIBIT D



California Public Employees' Retirement System
Customer Account Services Division
Retirement Account Services Section
P.O. Box 942709
Sacramento, CA 94229-2709
TTY: (877) 249-7442
888 CalPERS (or 888-225-7377) phone • (916) 795-1224 fax
www.calpers.ca.gov

June 06, 2012

Pier' Angela Spaccia
20260 Via Sansovino
Porter Ranch, CA 91326-0000

Dear Ms. Spaccia:

This letter serves to supplement the determination letter sent to you dated December 2, 2010. The California Public Employees' Retirement System (CalPERS) has finalized its review of your purchase of five years of Additional Retirement Service Credit (ARSC) that was paid for using funds from the City of Bell (City) and has determined that the payment was not lawful under the Public Employees' Retirement Law (PERL). As a result, CalPERS must rescind the purchase and is required to make the appropriate corrections to your account and to the City's account. In order to make this correction, the five years of ARSC previously credited to your account must be deleted and the contributions paid by the City must be credited back to the City's account. This correction will reduce the total service credit that can be used to calculate your retirement allowance. Previously, CalPERS notified you that it would not be including the 5 years of ARSC service in the calculation of your retirement benefit until CalPERS finalized a decision on this issue. However, it was later discovered that the 5 years of service credit had been included in the calculation of the benefit amount that you are currently receiving. CalPERS final determination on the ARSC issue is outlined below and necessitates a downward adjustment to the amount of your service credit and to your retirement benefit. The conclusions discussed in this letter are based upon the information presently available to CalPERS and CalPERS reserves the right to amend this determination should new or different information be located and/or developed.

Formal Determination

CalPERS conducted a review of the five years of ARSC that you purchased with City funds on June 15, 2005. The conclusions discussed in this letter are based upon all information presently available to CalPERS.

Government Code section 20909(a) provides:

"A member who has at least five years of credited state service, may elect, by written notice filed with the board, to make contributions pursuant to this section and receive not less than one year, nor more than five years, in one-year increments, of additional retirement service credit in the retirement system."¹

D

¹ All further references are to the Government Code unless otherwise specified.

Pier Angela Spaccia
June 06, 2012
Page 2

Subdivision (b) provides, in pertinent part: "A member may elect to receive this additional retirement service credit at any time prior to retirement by making the contributions as specified in sections 21050 and 21052." Section 21052 also provides in pertinent part, "A member or retired former employee who elects to receive service credit subject to this section shall contribute, in accordance with section 21050, an amount equal to the increase in employer liability, using the payrate and other factors affecting liability on the date of the request for costing of the service credit." These provisions authorize a member, not an employer, to pay for ARSC. This reading of the statute is supported by the legislative history.² Moreover, CalPERS has not located any documentation to show that the City's payment was ever authorized by the City Council.

Accordingly, based upon the information available to date, CalPERS has determined that your ARSC purchase failed to comply with the PERL and appears to be unlawful. Therefore, the City erred in sending the payment and CalPERS should not have accepted the City's payment. For the reasons detailed below, CalPERS has concluded it must correct the error and make a downward adjustment to your service credit balance. This correction will also cause a decrease to the amount of your retirement benefit.

Duty to Correct Mistakes

CalPERS was established by statute, the PERL, which grants it certain authority. The California Constitution also grants the CalPERS Board of Administration, as the Board of a public retirement system, certain powers. CalPERS has no authority other than those granted by the PERL and the Constitution and has the authority to pay benefits to a member only when authorized and only in amounts authorized.³ CalPERS has no authority to include ARSC purchased time in a retirement benefit where that purchase was unlawful. Generally, a government agency has no authority to pay a benefit not authorized by law.⁴ Given CalPERS has now concluded that your ARSC transaction must be rescinded, such service cannot be used to calculate any retirement benefit.

The management and control of this system is vested in board pursuant to section 20120. Section 20123 provides that "the board shall determine and may modify benefits for service and disability" and section 20125 provides that the board shall determine who are employees and is the sole judge of the conditions under which a person may be admitted to and continue to receive benefits under this system. CalPERS is required to correct the amount of your retirement allowance. Section 20160 requires CalPERS to correct errors made by an employer or by this System. Once an error is discovered, CalPERS is required to take action to correct it and is permitted to pay only those benefits authorized under the PERL. Further, section 20164(b) states that where the System has made an erroneous payment to a member,

² For example, the Senate Floor Analysis accompanying Assembly Bill 719 (the bill that implemented section 20909 in 2003) explained: "[T]he cost of [ARSC] will be fully paid by the member, with no employer contribution permitted."

³ See CalPERS Precedential Decision *In re the Matter of the Appeal of Decreased Level of Retirement Allowance of Harvey H. Henderson* (1998) Precedential Board Decision No. 98-02 and California Constitution, Art. XVI, section 17.

⁴ *Longshore v. County of Ventura* (1979) 25 Cal.3d 14, 22-23, 28-29.

Pier Angela Spaccia
June 06, 2012
Page 3

the right to collect expires three years from the date of payment except where the payment is a result of fraudulent reports for compensation made.⁵ This also serves to confirm that CalPERS will seek to collect back all overpayments authorized by statute. Therefore, at a minimum, CalPERS will seek to collect back all overpayments made on or after October 1, 2010. At present, the amount overpaid during this timeframe approximates \$15,987.96 (21 months x \$757.91 per month + 3 months x \$23.95 2012 COLA effective April 1, 2012).

Conclusion

As a result of reviewing all information available to date, and for the reasons outlined above as well as those outlined in our December 2, 2010 correspondence, CalPERS has concluded that it must make a reduction to your service credit due to the rescission of the ARSC transaction and must return the City's contributions by crediting the City's account. Accordingly, your corrected service credit total as of June 30, 2012 will be 22.056 years. The reduction in your total service credit will result in a decrease to your retirement allowance in the approximate amount of \$757.91 per month. This determination will impact the current amount of your retirement benefit since your current retirement benefit included the 5 years of ARSC credit. Accordingly, the corrected retirement benefit that you should be receiving based on all determinations made to date is \$2,862.17 per month. CalPERS will continue to pay the current amount of your benefit between now and the time of your administrative hearing currently scheduled for August 27, 2012. However, should a decision be reached to cut back your allowance in the administrative process, CalPERS will seek to recover all overpayments made to you allowable under the law.

Right to Appeal

You have the right to appeal the final decision referred to in this letter if you desire to do so, by filing a written appeal with CalPERS, in Sacramento, within thirty days of the date of the mailing of this letter, in accordance with Government Code section 20134 and sections 555-555.4, Title 2, California Code of Regulations. An appeal, if filed, should set forth the factual basis and legal authorities for such appeal.

We note you already filed an appeal to the original determination letter and CalPERS will deem that appeal as including an appeal for the ARSC issue as well. Accordingly, you need not file an additional appeal in response to this letter, unless you desire to do so. CalPERS will consolidate all compensation and ARSC issues into one administrative hearing. Should you choose to file any additional information for your appeal related to the ARSC issue, it should be mailed to the following address:

KAREN DEFRANK, Chief
Customer Account Services Division
P.O. Box 942709
Sacramento, CA 94229-2709

⁵ See Gov. Code section 20164(d).

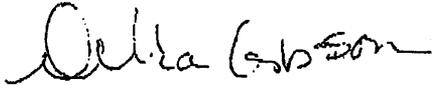
Pier' Angela Spaccia
June 06, 2012
Page 4

As noted above, we note that an administrative hearing has already been scheduled in your case with the Office of Administrative Hearings. Our Legal Office will work directly with your counsel in the existing appeal and hearing process to address all issues relative to the determination discussed above as well as for all issues discussed in our prior determination letter.

After the hearing is completed, the Administrative Law Judge will issue a Proposed Decision in approximately 30 days. The CalPERS Board of Administration will then make a determination whether to accept or reject that Proposed Decision. If the Board rejects the Proposed Decision, they will hold a Full Board Hearing in order to review the entire hearing record again before finalizing their decision.

If you have any questions or concerns regarding this matter, please contact Nova Horton, manager, at (916) 795-0828.

Sincerely,



Debra Gibson, Assistant Division Chief
Member Account Management
Customer Account Services Division

cc: Arne Croce, City of Bell
City Council Members, City of Bell
Karen DeFrank, Chief CASD
Mary Lynn Fisher, Chief CASD
Gina Ratto, Deputy General Counsel
Marguerite Seabourn, Assistant Chief Counsel
Harland W. Braun, Counsel for Ms. Spaccia

In the Matter of the Calculation of Final Compensation:
PIER'ANGELA SPACCIA, Respondent, and CITY OF BELL, Respondent
CalPERS Board of Administration Case No. 2011-0789

RESPONDENT SPACCIA'S REPLY TO CALPERS'
OBJECTION TO THE DECLARATION
OF CLIFTON WADE ALBRIGHT, ESQ.

EXHIBIT E

EXHIBIT E

EXHIBIT E

Harland Braun

From: Harland Braun [harland@braunlaw.com]
Sent: Saturday, July 07, 2012 10:45 AM
To: 'd.hoody1@comcast.net'
Subject: RE: AB 719

I am sorry to have disturbed your retirement, but my client's retirement may depend on the analysis possibly written by you in 2003. I believe the word should have been "required" in the context of the bill and the legislative history. You can understand why I am concerned that my client's retirement could be jeopardized by the casual mistaken choice of words by you or your staff.

From: d.hoody1@comcast.net [mailto:d.hoody1@comcast.net]
Sent: Saturday, July 07, 2012 1:03 AM
To: Harland Braun
Subject: Re: AB 719

Mr. Braun:

I am retired and no longer do this work. Good luck finding an answer to your questions.

David Felderstein

From: "Harland Braun" <harland@braunlaw.com>
To: dfelderstein@calautomuseum.org
Sent: Friday, July 6, 2012 10:27:49 PM
Subject: AB 719

Mr. Felderstein-I have the analysis of a AB 719 you wrote in 2003. I have a question about the analysis which came up in the context of a Calpers Pension discussion. As I analyze the bill, to purchase back time, an employee under certain circumstances can purchase up to five years back time. It is clear the employer is not required to pay any portion of the back time. However, as I read the bill, there is nothing prohibiting the employer from paying all or a portion of the back time payment. In some circumstances an employer might want to e.g. to encourage an employee to retire early.

In the analysis, there is a statement that "no employer contribution [is] permitted." There is no language in the bill supporting this language and in fact the analysis discusses circumstances in which an employer does pay a portion. My question is whether the word "permitted" should have been "required." That

**seems more consistent with the bill and the rest of the analysis.--Harland Braun
310-277-4777.**

P.S. If you want me to scan you the bill and analysis just ask.

1 PROOF OF SERVICE

2
3 I am a citizen of the United States and a resident of the County of Los Angeles; I
4 am over the age of eighteen years and not a party to the within entitled action; my
5 business address is 1880 Century Park East, Suite 710, Los Angeles, California.

6 On December 21, 2012, I served the within document entitled

7 **RESPONDENT SPACCIA'S REPLY TO CALPERS'**
8 **OBJECTION TO THE DECLARATION OF**
9 **CLIFTON WADE ALBRIGHT, ESQ.**

10 on the interested parties in said action, by transmitting a true copy thereof as follows:

11 Office of Administrative Hearings
12 1350 Front Street, Suite 3005
13 San Diego, CA 92101
14 By E-mail: sanfilings@dgs.ca.gov
15 By Fax: (916) 376-6325

16 Wesley E. Kennedy, Esq.
17 California Public Employees' Retirement System
18 P.O. Box 942707
19 Sacramento, CA 94229-2707
20 By E-mail: wesley_kennedy@calpers.ca.gov
21 By Fax: (916) 795-3659

22 Stephen Onstot, Esq.
23 Aleshire & Wynder LLP
24 18881 Von Karman Ave., Suite 1700
25 Irvine, CA 92612
26 By E-mail: sonstot@awattorneys.com

27 I declare, under penalty of perjury, that the foregoing is true and correct.

28 Executed this 21st day of December, 2012, at Los Angeles, California.



JANUARY KING

Law Offices
HARLAND W. BRAUN
1880 Century Park East, Suite 710
Los Angeles, CA 90067-1608
Telephone: (310) 277-4777
Fax: (310) 277-4045

FAX TRANSMISSION COVER SHEET

This message is intended only for the use of the individual or entity to which it is addressed, and may contain information privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone.

TO:	Office of Administrative Hearings San Diego	FAX #:	916 / 376-6325
TO:	James Ahler, ALJ Office of Administrative Hearings	FAX #:	619 / 525-4419
TO:	Wesley Kennedy, Esq. CalPERS	FAX #:	916 / 795-3659
FROM:	Harland W. Braun, Esq.	DATE:	December 21, 2012
RE:	Pier'Angela Spaccia, Case No. 2011-0789 OAH No. 2012020198	no. of pages	21 Including cover sheet
Message: Respondent Spaccia's Reply to CalPERS' Objection to the Declaration of Clifton Wade Albright, Esq.			
Original sent: <input type="checkbox"/> first class mail <input type="checkbox"/> overnight <input type="checkbox"/> not being sent			

Attachment I (I)
Page 1 of 10

1 **HARLAND W. BRAUN, ESQ.**
1880 Century Park East, Suite 710
2 Los Angeles, California 90067-1608
State Bar No. 41842
3 Telephone: (310) 277-4777
Facsimile: (310) 277-4045

4 Attorney for Respondent
5 **PIER'ANGELA SPACCIA**

6
7
8 **BOARD OF ADMINISTRATION**
9 **CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT TRUST**
10

11
12 In the Matter of the Calculation of
Final Compensation:

} **CASE NO. 2011-0789**
OAH NO. 2012020198

13 **PIER'ANGELA SPACCIA,**

14 Respondent,

} **DISCUSSION OF EQUITABLE**
ESTOPPEL AND PRENTISS V. CALPERS,
157 CAL.APP. 4TH 983 (2007)

15 and

16
17 **CITY OF BELL,**

18 Respondent.

} Hearing Date: December 27-28, 2012
Time: 9:00 a.m.
Location: Orange
ALJ: James Ahler

19
20 **INTRODUCTION**

21 Pier'Angela Spaccia was a seven-year employee of the City of Bell who had
22 retired on July 31, 2010. Pier'Angela Spaccia had no specific expertise in the CalPERS
23 system, and relied on the City of Bell, its attorneys and accountants, and CalPERS for
24 her belief that everything regarding her pension was legally in order.

25 Although she had no general authority or obligations with regard to the CalPERS
26 compliance by Bell, fortuitously she was assigned to be the interface for the CalPERS
27 2006 audit of the City of Bell. That audit specifically approved the payroll schedules
28 and individual contracts which were the basis for Bell's payments to CalPERS. Again

Attachment I (I)
Page 2 of 10

1 fortuitously, Ms. Spaccia was assigned the task of requesting a salary increase
2 exemption from CalPERS, which again required approval from CalPERS of her City of
3 Bell contract and its legal compliance.

4 After Ms. Spaccia retired, the City of Bell and CalPERS claimed that her pension
5 was fatally defective because the City of Bell improperly complied with required
6 pension documentation and CalPERS improperly approved the documentation. Had Ms.
7 Spaccia ever been given any hint by the City of Bell or CalPERS that there was a fatal
8 flaw with her pension, she would have insisted her employer comply with CalPERS
9 regulations, or sought employment elsewhere.

10 During Ms. Spaccia's employment CalPERS had no difficulty accepting
11 hundreds of thousands of dollars of funding for her pension based on what it now claims
12 is defective documentation. In fact, because the City of Bell's contributions for Ms.
13 Spaccia's pension were calculated by CalPERS, it should have no financial interest in
14 whether Ms. Spaccia obtains her pension because the pension has been fully funded by
15 the City of Bell. The City of Bell, however, which is primarily responsible for any
16 defects in the documentation, now wishes to profit from its own failure to comply with
17 all CalPERS regulations by obtaining a rebate or offset from CalPERS for any pension
18 denied Ms. Spaccia.

19 Equitable Estoppel

20 Pier' Angela Spaccia was not responsible for any defects in the documentation for
21 the City of Bell CalPERS pension plan. The defects were specifically caused by the
22 City of Bell, the attorneys and accountants for the City of Bell, and the failure of
23 CalPERS to properly audit the CalPERS program for the City of Bell.

24 In fact, any review of the 2006 CalPERS audit clearly indicates that the auditors
25 approved the City of Bell documentation. Now the City of Bell wishes to profit from its
26 own failure, and CalPERS wishes to deprive Ms. Spaccia of her legitimate pension
27 because it failed to properly audit the City of Bell. This controversy is the classic case
28 where the doctrine of equitable estoppel bars the City of Bell from profiting from its

Attachment I (I)
Page 3 of 10

1 own failures, and CalPERS from depriving Ms. Spaccia of her pension because it failed
2 to properly audit and supervise the City of Bell.

3 Equitable estoppel applies where one party's conduct has led to the reliance of
4 another party to his or her detriment. As discussed in Witkin, Summary of Cal. Law,
5 Equity, Equitable Estoppel, § 192 et seq., estoppel may be applied either where there is a
6 duty to act properly, or from the silence where there is a duty to speak.

7 The City of Bell had a duty to properly run its CalPERS compliance so as to
8 protect its employees and pensioners. In fact, as discussed elsewhere, if the City of Bell
9 prevails in the argument that it should benefit from its own failure, it will be able to
10 deprive at least a half dozen City of Bell retirees of a substantial portion of their
11 pension, and therefore gain a profit from its own failure.

12 Similarly, CalPERS not only failed to properly supervise the City of Bell,
13 accepted hundreds of thousands of dollars based on documentation it now claims is non-
14 compliant, and actually approved the documentation of the City of Bell in the 2006
15 audit.

16 CalPERS 2006 Audit of the City of Bell

17 The CalPERS 2006 City of Bell audit is Spaccia's Exhibit 31. The Court should
18 note that this thorough audit nowhere questions whether there is adequate
19 documentation for a publicly available pay schedule. Moreover, at page 8 of the audit,
20 CalPERS states:

21 "Payrates from the City's payroll registers and payrates reported to
22 CalPERS were reconciled to the City's salary schedules and Board
23 resolutions. We reviewed a sample of payrates reported in service period
24 1/06-3. All sampled employees' payrates were within the City's salary
25 schedules and/or Board resolutions. However, we noted that the City's
26 Chief Administrative Officer received a 47.33% increase effective July 1,
27 2005."

28 This comment by the CalPERS auditors indicates that they not only viewed the
salary schedules and City resolutions, but knew that the City's Chief Administrative
Officer was being paid through a separate contract not fully disclosed on the City's pay
schedules.

Prentiss v. CalPERS

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Apparently CalPERS wishes to use *Prentiss v. CalPERS*, 157 Cal.App.4th 983 (2007), to deprive Pier' Angela Spaccia and other retirees of the City of Bell of their legitimate pensions: pensions which have been fully funded by the City of Bell.

Prentiss has no application to Ms. Spaccia's matter because *Prentiss* and the City of Corona specifically requested an exemption from the CalPERS regulations for *Prentiss*' pay increase to become the manager of the water and power department. This request was specifically rejected by CalPERS in 2001, and yet when *Prentiss* retired at the end of 2003, he ultimately sued CalPERS claiming that he had a right to such an increased pension.

The *Prentiss* case reviews the basic principles involved in determining "compensation earnable" under Government Code, Section 20636, much of which is inapplicable to Pier' Angela Spaccia.

Pier' Angela Spaccia was classified in the executive management category by the City of Bell, and had an individual contract executed by CAO Robert Rizzo pursuant to Resolution 2006-42. Apparently CalPERS has an issue with the contract because it was not specifically listed on the "publicly available pay schedule."

In hindsight, Ms. Spaccia fully understands why there should be a publicly available pay schedule which lists all employees of the City of Bell. At the time she worked at the City of Bell, except for a short period prior to 2005, she had no responsibility or authority over the pay schedules, the contracts, or how they were maintained. However, because of the importance that CalPERS now seems to put on the publicly available pay schedule during this hearing, she wonders why CalPERS never brought this to her or the City of Bell's attention during the 2006 audit or during her interaction with CalPERS while obtaining the special exemption recommended by the CalPERS auditors.

Additional Retirement Service Credit

As the Court knows from the previous hearing, CalPERS now claims that the

1 additional retirement service credit is invalid because the funds had to come from the
2 individual employee rather than the City of Bell. Again, we have a similar situation
3 with respect to equitable estoppel.

4 Ms. Spaccia believes that under the statute creating the opportunity to purchase
5 up to five years of additional retirement service credit, it makes little sense to prohibit a
6 municipality, if it wishes, to purchase an employee's service credit. This could be done
7 for reasons of accelerating a retirement, settling a lawsuit, or simply for good employee
8 relations.

9 In any event, CalPERS accepted at least a dozen separate checks from the City of
10 Bell purchasing employees' service credit, yet never explained to the City of Bell, the
11 employees involved, or anyone else apparently, that it now interpreted a footnote in the
12 legislative history of the statute to mean that a city was prohibited from purchasing
13 service credit.

14 Again, CalPERS cannot impliedly misrepresent to a city that it can purchase
15 service credit, accept the city's funds for the employees' service credit, and now claim
16 after the employees fully relied on CalPERS, that such a transaction was illegal.

17

18 CONCLUSION

19 A city employee has a right to be able to work, earn a pension, and rely on the
20 promise of that pension for the balance of his or her life. Pier' Angela Spaccia was such
21 an employee.

22 It is fundamentally unfair for the City of Bell to try to deprive her of her rightful
23 pension by claiming that the City of Bell was not in full compliance with the CalPERS
24 regulations. Similarly, it is fundamentally unjust for CalPERS to take seven years of
25 funding from the City of Bell for Pier' Angela Spaccia's pension, fail to inform Ms.
26 Spaccia or the City of Bell that its paperwork was not in order, and now deny
27 Pier' Angela Spaccia the pension which she reasonably expected.

28 Pensions require stability, not merely the purchase of a lawsuit. Fortunately the

Attachment I (I)
Page 7 of 10

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doctrine of equitable estoppel precludes both the City of Bell and CalPERS from
profiting from its own wrong or its own failure.

Respectfully submitted,

Date: December 16, 2012 Harland W. Braun

HARLAND W. BRAUN
Attorney for Respondent
ANGELA SPACCIA

Attachment I (I)
Page 8 of 10

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PROOF OF SERVICE

I am a citizen of the United States and a resident of the County of Los Angeles; I am over the age of eighteen years and not a party to the within entitled action; my business address is 1880 Century Park East, Suite 710, Los Angeles, California.

On December 26, 2012, I served the within document entitled

**DISCUSSION OF EQUITABLE ESTOPPEL AND
PRENTISS V. CALPERS, 157 CAL.APP. 4TH 983 (2007)**

on the interested parties in said action, by transmitting a true copy thereof as follows:

Office of Administrative Hearings
1350 Front Street, Suite 3005
San Diego, CA 92101
By E-mail: sanfilings@dgs.ca.gov
By Fax: (916) 376-6325

Wesley E. Kennedy, Esq.
California Public Employees' Retirement System
P.O. Box 942707
Sacramento, CA 94229-2707
By E-mail:
By Fax: (916) 795-3659

Stephen Onstot, Esq.
Aleshire & Wynder LLP
18881 Von Karman Ave., Suite 1700
Irvine, CA 92612
By E-mail: sonstot@awattorneys.com

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed this _____ day of December, 2012, at Los Angeles, California.

JANUARY KING

Attachment I (I)
Page 9 of 10

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PROOF OF SERVICE

I am a citizen of the United States and a resident of the County of Los Angeles; I am over the age of eighteen years and not a party to the within entitled action; my business address is 1880 Century Park East, Suite 710, Los Angeles, California.

On December 26, 2012, I served the within document entitled

**DISCUSSION OF EQUITABLE ESTOPPEL AND
PRENTISS V. CALPERS, 157 CAL.APP. 4TH 983 (2007)**

on the interested parties in said action, by transmitting a true copy thereof as follows:

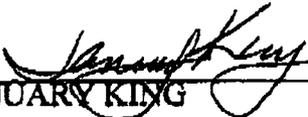
Office of Administrative Hearings
1350 Front Street, Suite 3005
San Diego, CA 92101
By E-mail: sanfilings@dgs.ca.gov
By Fax: (916) 376-6325

Wesley E. Kennedy, Esq.
California Public Employees' Retirement System
P.O. Box 942707
Sacramento, CA 94229-2707
By E-mail: wesley_kennedy@calpers.ca.gov
By Fax: (916) 795-3659

Stephen Onstot, Esq.
Aleshire & Wynder LLP
18881 Von Karman Ave., Suite 1700
Irvine, CA 92612
By E-mail: sonstot@awattorneys.com

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed this 26th day of December, 2012, at Los Angeles, California.



JANUARY KING

Attachment I (I)
Page 10 of 10

Law Offices
HARLAND W. BRAUN
 1880 Century Park East, Suite 710
 Los Angeles, CA 90067-1608
 Telephone: (310) 277-4777
 Fax: (310) 277-4045

COPY**FAX TRANSMISSION COVER SHEET**

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TO:	Office of Administrative Hearings San Diego	FAX #:	916 / 376-6325
TO:	James Ahler, ALJ Office of Administrative Hearings	FAX #:	619 / 525-4419
TO:	Wesley Kennedy, Esq. CalPERS	FAX #:	916 / 795-3659
FROM:	Harland W. Braun, Esq.	DATE:	December 26, 2012
RE:	Pier' Angela Spaccia, Case No. 2011-0789 OAH No. 2012020198	no. of pages	9 Including cover sheet
Message:			
<p>Discussion of Equitable Estoppel and <i>Prentiss v. CalPERS</i>, 157 Cal.app. 4th 983 (2007)</p>			
Original sent: <input type="checkbox"/> first class mail <input type="checkbox"/> overnight <input type="checkbox"/> not being sent			

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8 Attorneys for Petitioner California
9 Public Employees' Retirement System

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' NOTICE OF LODGING

19 PLEASE TAKE NOTICE that the California Public Employees' Retirement System
20 (CalPERS), herewith lodges the following Transcripts of Proceedings: Vols. I, II, III, and IV.

Respectfully submitted,

21 Dated: January 28, 2013

CALIFORNIA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM

22 By 
23 WESLEY E. KENNEDY
24 Senior Staff Counsel
25 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' NOTICE OF LODGING - 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:

Harland W. Braun, Esq.
1880 Century Park East, Suite 710
Los Angeles, CA 90067
By email harland@braunlaw.com
w/o attachments

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Office of Administrative Hearings
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San Diego, CA 92101
By email sanfilings@dgs.ca.gov
with email attachments
(916) 376-6325 Fax w/o attachments
By Fax and email

- [] 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.
- [X] 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.
- [X] 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

Barbara Moseman
SIGNATURE