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7 **BEFORE THE BOARD OF ADMINISTRATION**
8 **CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM**
9

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11
12 In the Matter of Applicability of Government
13 Code Section 20638 to Member Fred Guido

CALPERS CASE NO. 9711
OAH CASE NO. TBD

14 FRED GUIDO,

FRED GUIDO'S NOTICE OF DEFENSE,
AFFIRMATIVE DEFENSES AND NEW
MATTER

15 Respondent,

16 and

EXHIBITS 1-3

17 CITY OF CUDANY,

18 Respondent.
19
20
21

22 Fred Guido submits this *Notice of Defense, Affirmative Defenses and New Matter*
23 (hereinafter "*Notice of Defense*") in response to CalPERS' *Statement of Issues* dated January 24,
24 2012, but not served upon Respondent Guido until February 3, 2012 and actually received on
25 February 6, 2012. This *Notice of Defense* specifically denies each part of the *Statement of Issues*
26 that is not expressly admitted. The *Notice of Defense* also sets forth special defenses and
27 objections to the *Statement of Issues*.

28 Respondent appeals (1) CalPERS' denial of reciprocity with the Los Angeles County

1 Employees Retirement Association ("LACERA") and (ii) denial of an associated increase in his
2 years of service and final compensation based on his service and payrate earned under LACERA.

3 INTRODUCTION

4 CalPERS incorrectly and unjustly denied Fred Guido ("Guido") reciprocity and an
5 associated increase in his CalPERS pension benefits for his years of services and final
6 compensation earned while a member of LACERA.

7 Guido asserts all his equitable defenses and rights. It is well-established that the doctrine
8 of estoppel may be applied against a government body where justice and right require it. (*City of*
9 *Long Beach v. Mansell* 3 Cal.3d 462, 493 (1970); *Piazza Properties, Ltd. v. Department of*
10 *Motor Vehicles*, 71 Cal.App.3d 622, 631 (1977).) Courts in several jurisdictions, including
11 California, have specifically upheld the application of equitable estoppel against state and county
12 government retirement associations. (See e.g. *Crumpler v. Board of Administration* (1973) 32
13 Cal.App.3d 567; *Sellers v. Board of Trustees of Police and Firemen's Retirement System* (2008)
14 399 N.J.Super. 51; *Fike v. Board of Trustees, Teachers' and State Emp. Retirement System*
15 (1981) 53 N.C.App. 78; *Kentucky Retirement Systems v. Fryrear* (2009) 316 S.W.3d 307.)

16 CalPERS is equitably estopped from unjustly denying Guido reciprocity and an
17 associated increase in his retirement benefits for his service and salary under LACERA.

18 CalPERS' actions are a breach of its fiduciary duties.

19 SPECIAL DEFENSES AND RESPONSE TO STATEMENT OF ISSUES

20 Guido specifically denies each part of the *Statement of Issues* that is not expressly
21 admitted. Guido hereby presents the following special defenses, specific denials, and responses
22 to the *Statement of Issues* pursuant to *Government Code* section 11506.

23 1. Guido recognizes that Petitioner CalPERS makes and files the *Statement of Issues*
24 in its Official capacity.

25 2. Guido timely filed an appeal and an amended appeal and requested a hearing.

26 3. The appeal should not be limited to the narrow issues that CalPERS proposes.

27 4. As an affirmative defense, Guido also asserts that CalPERS is equitably estopped
28 from unjustly denying him reciprocity and an associated increase in his retirement benefits for

1 his service and salary under LACERA.

2 **SPECIAL NOTICE OF DEFENSE,**

3 **AFFIRMATIVE DEFENSES AND NEW MATTER**

4 Under *Government Code* section 11506(a)(5), Guido submits the following new matter:

5 **FACTUAL BACKGROUND**

6 **Guido's CalPERS service with City of Cudahy**

7 1. Fred Guido was elected to public office with the city council of the City of
8 Cudahy in March 1970.

9 2. Beginning on October 25, 1975, the City of Cudahy contracted with the California
10 Public Employees' Retirement System (CalPERS) to provide pension benefits to city council
11 members. The contract provided city councilmembers with service credit for prior years' service
12 back to April 21, 1970. The City of Cudahy remains a contract city today by *Government Code*
13 definitions.

14 3. Between 1970 and 1982, Guido served as member of the city council of the City
15 of Cudahy.

16 4. Guido's monthly salary as a councilmember for the City of Cudahy was \$150.00
17 per month. The salary as public officer was set by the *Government Code* based on the city's
18 population.

19 5. The City of Cudahy took monthly deductions from Guido's pay checks consisting
20 of State and Federal tax deductions as well as employee contributions to CalPERS.

21 6. Choosing not to run a fourth term, Guido stepped down from the City of Cudahy
22 city council the second Tuesday of April 1982.

23 **Guido's Earned CalPERS Service Credit**

24 7. Guido's CalPERS service credit spans 12.25 years, with his membership
25 beginning April 21, 1970 and continuing through April 1982.

26 8. The five (5) years between April 21, 1970 and October 25, 1975 were credited to
27 Guido. A seven day discrepancy between the membership data form and the letter Guido
28 received exists in the record.

1 **Guido's Service Under Los Angeles County Employees' Retirement Association (LACERA)**

2 9. Guido joined the Los Angeles County Sheriff's Department in March 1973 and
3 was thereafter credited for time and service under LACERA.

4 10. Guido maintained employment with Los Angeles County through November
5 1977 (approximately four and one half years).

6 11. Guido left the employment of Los Angeles County in 1977 and went into the
7 private sector for the next 19 years.

8 12. At the request of Los Angeles County Supervisor Don Knabe, Guido returned to
9 employment with Los Angeles County in December 1996 to serve as Supervisor Knabe's Chief
10 of Staff, at which time he began earning additional service credit with LACERA.

11 **CalPERS' Communications to Guido Confirming Reciprocity**

12 13. On October 6, 2003, CalPERS wrote Fred Guido that:

13 CalPERS has reviewed your account and determined that
14 Reciprocity has been established between CalPERS and LACERA.
15 Since you have established Reciprocity, CalPERS will use the
16 highest final compensation earned under either system as long as
17 you retire on the same date under both systems and you are not an
18 "Elective or Appointed Officer" on or after July 1, 1994.

19 Please provide us with your final compensation amount with
20 LACERA. That final compensation amount may be higher than
21 your final compensation amount is with CalPERS.

22 (EXHIBIT 1.)

23 14. At that point in time, Guido estimated his final compensation with LACERA at
24 \$10,000 per month. Accordingly, CalPERS' retirement estimate in October 2003 utilized the
25 \$10,000 figure as Guido's final compensation amount for all of the service credit he had earned
26 in connection with his City of Cudahy employment. (EXHIBIT 1.)

27 15. CalPERS' October 2, 2007 retirement estimate that it provided to Guido included
28 the City of Cudahy as a CalPERS Employer and listed his Final Compensation as \$11,838.00
which would have entitled him to greater than \$3,000 a month in a CalPERS pension under
reciprocity. (EXHIBIT 3.)

1 16. As he began to approach retirement, and following the instructions in printed
2 CalPERS material urging members to request an official retirement estimate approximately six
3 months before their actual retirement, Guido again asked CalPERS to provide him with such an
4 official retirement estimate. On October 20, 2008, *less than seven (7) months before his*
5 *planned retirement, CalPERS again confirmed reciprocity* and wrote Guido that:

6 CalPERS has reviewed your account and determined that
7 Reciprocity has been established between CalPERS and LACERA.

8 Per your request, CalPERS has used the final compensation
9 amount of \$11,838.00 with LACERA. The information in this
10 estimate has been provided by you and has not been verified by
11 your employer. Any changes to your final compensation could
12 affect your retirement estimate and a new estimate would need to
13 be requested.

14 (EXHIBIT 2.)

15 **Guido's Reliance on CalPERS' Communications**

16 17. In Fall of 2003, Mr. Guido was offered several different opportunities, including
17 several employment opportunities within the County.

18 18. Specifically in Fall of 2003, Guido was deciding (i) whether to and (ii) when to
19 leave his employment position with Los Angeles County Supervisor Knabe.

20 19. At this time, Guido was given an opportunity to transfer to a Los Angeles County
21 department that could benefit from his past and current work experience. This position would
22 increase his LACERA pension.

23 20. *Relying on CalPERS' representations that reciprocity had been established,*
24 Guido took into consideration and weighed the opportunities based on the expected amount of
25 salary and total pension benefit (LACERA *and* CalPERS) associated with the offered positions.

26 21. The expected amounts of salary and total pension benefit to be received were
27 determining factors in Guido's decision.

28 22. When deciding which new job to take in Fall of 2003, Guido's choices and
opportunities included (1) starting a new position with Los Angeles County in a department that
had pension benefits with LACERA and (2) starting a new position with Los Angeles County in

1 a department that had contracted for pension benefits with CalPERS.

2 23. Specifically, Guido had an opportunity to transfer to the Community
3 Development Department (CDC) of the County which offered CalPERS pension benefits.

4 24. Based on information and belief, Guido believes that he knows another person
5 who retired after he did who went to work for CDC for the specific reasons to (i) increase his
6 final compensation for his CalPERS service pension and/or (ii) establish reciprocity and link his
7 city council years of service and final compensation with a CalPERS contracting city to his
8 county time and final compensation under LACERA (in order to gain a higher pension).

9 25. *Based on CalPERS representations*, and because CalPERS had repeatedly
10 assured Guido that reciprocity had been established, Guido did not take the CDC position which
11 would have also offered Guido reciprocity and/or provided Guido with a higher CalPERS benefit
12 based on the final compensation earned for that service.

13 26. Specifically, after Guido made an inquiry of CalPERS in September/October of
14 2003, Guido heard directly from CalPERS that reciprocity had already been established.

15 27. As a result of CalPERS' representation, Guido opted to transfer to the Los
16 Angeles County Department of Public Works, a LACERA-covered position.

17 28. As a result of CalPERS' representation, Guido declined the opportunity (i) to
18 transfer to another county department (the CDC) which had a pension plan under contract with
19 CalPERS or (ii) to take another CalPERS-covered position.

20 29. Specifically, if Guido had been informed that reciprocity had not been
21 established, then Guido would have taken the CDC position (or another position where the entity
22 had contracted with CalPERS), and as such he would have reinstated in full to CalPERS and
23 increased his CalPERS pension based either on (i) his then earned "final compensation" or (ii)
24 via reciprocity through his prevailing county salary.

25 30. By CalPERS' errors and omission misinforming Guido (by CalPERS timely
26 informing Guido that he had established reciprocity already), CalPERS denied Guido the timely
27 opportunity to establish reciprocity.

28 31. CalPERS' misinformation denied Guido that opportunity to thereby increase his

1 pension benefits to those allowed by law.

2 32. In October 2003, based on CalPERS' representation that reciprocity had been
3 established, Guido took a position as Chief of Administrative Operations with the Los Angeles
4 County Department of Public Works with the same salary he was earning before leaving Los
5 Angeles County Supervisor Knabe's office. The Public Works position provides pension benefits
6 via LACERA and does not have a separate contract with CalPERS.

7 33. In Fall 2008, approximately one year before his planned retirement, Guido
8 reassessed his retirement benefits, including medical coverage, monthly stipend, reciprocity and
9 retirement coordination.

10 34. In Fall 2008, Guido again called and inquired of CalPERS about the amount and
11 status of his pension benefits.

12 35. In October 2008, in response to Guido's inquiry, CalPERS sent Guido a letter
13 again confirming that reciprocity had been established.

14 36. In October 2008, in response to Guido's inquiry, CalPERS sent Guido a letter that
15 was personalized to Guido's fact situation. In that letter, CalPERS provided Guido a monthly
16 benefit statement based on projected final year compensation that was determined on the fact that
17 reciprocity had been established.

18 37. In April 2009 and *after* filing his Service Retirement Election Applications with
19 CalPERS and LACERA, but *before* retiring on June 1, 2009, Guido was approached by a council
20 member of a local city to be hired as a full time interim City Manager of a CalPERS contracting
21 city.

22 38. On or before April 2009, if CalPERS had made Guido aware of the reciprocity
23 issue in October 2008 or even as late as April 2009 when Guido filed his Retirement Election
24 Application, then Guido would have pursued the opportunity to become the interim City
25 Manager and thereafter reinstated into CalPERS and thereby either (i) increased his CalPERS
26 pension for the increased salary or (ii) separately established reciprocity.

27 39. In April 2009, Guido again considered his employment options. The expected
28 amount of the LACERA and CalPERS pension benefit played a determining factor in Guido's

1 decision whether to retire or whether to continue full-time employment.

2 40. In April 2009, Guido again relied on CalPERS' representations to him that
3 reciprocity had been established.

4 41. In April 2009, if Guido had known that he had not established reciprocity, then he
5 would have taken the executive level position at the city and thus earned a higher final
6 compensation rate for his CalPERS position even if reciprocity with LACERA had not been
7 earlier established.

8 42. In April 2009, CalPERS misinformation (or its failure to timely inform him of his
9 rights) denied Guido the opportunity to establish reciprocity and thereby the higher benefit.

10 43. In April 2009, Guido relied on CalPERS' specific representation that reciprocity
11 had been established when he turned down the position at the contracting city.

12 44. In April 2009, Guido relied on CalPERS representations (i) that reciprocity had
13 been established and (ii) that he was entitled to use the highest salary that he earned at LACERA
14 for use in his "final compensation" for his CalPERS pension, when he declined the position as
15 City Manager.

16 45. In April 2009, based on representation from CalPERS that he had established
17 reciprocity, Guido decided not to seek further employment as an interim City Manager with a
18 CalPERS contracting agency that would have increased his CalPERS pension benefits.

19 46. Guido remained an employee with Los Angeles County until he retired on June 1,
20 2009.

21 **Guido Retires**

22 47. On April 7, 2009, Guido filed his Service Retirement Election Application at the
23 Regional CalPERS Office in Glendale, California. He indicated on the form that he was retiring
24 from two public employment systems on June 1, 2009 and that he would be using his single
25 highest year of salary with LACERA for purposes of calculating his benefits from both CalPERS
26 and LACERA.

27 48. CalPERS' representative in Glendale who reviewed Guido's application consulted
28 Guido's electronic file in the CalPERS database, and validated that reciprocity was established at

1 the time that Guido filed his retirement application.

2 49. Guido once again relied on the specific representation of the CalPERS
3 representative that reciprocity had been established and that he was entitled to the higher
4 CalPERS benefit when and such that he filed his application.

5 50. Had CalPERS raised questions about reciprocity at that time, Guido would not
6 have filed his retirement application.

7 **CalPERS reneges on Reciprocity**

8 51. On June 20, 2009, or *two and a half (2½) months after* Guido submitted his
9 retirement application, and *three (3) weeks after retiring*, CalPERS wrote Guido that CalPERS
10 will no longer grant reciprocity.

11 **Guido's Damages**

12 52. CalPERS informed Guido that his CalPERS benefit would be approximately \$70
13 a month instead of approximately \$3,000 a month for the rest of his life.

14 **Guido Timely Appeals**

15 53. Guido timely filed an Appeal on July 29, 2009.

16

17

LAW AND ARGUMENT

18 **I. CALPERS IS EQUITABLY ESTOPPED FROM DENYING RECIPROCITY TO**
19 **GUIDO**

20 **A. Elements of Equitable Estoppel**

21 It is well-established that the doctrine of estoppel may be applied against a government
22 body where justice and right require it. (*City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 493;
23 *Piazza Properties, Ltd. v. Department of Motor Vehicles* (1977) 71 Cal.App.3d 622, 631.)

24 Courts in several jurisdictions, including California, have specifically upheld the
25 application of equitable estoppel against state and county government retirement associations.
26 (See e.g. *Crumpler v. Board of Administration* (1973) 32 Cal.App.3d 567; *Sellers v. Board of*
27 *Trustees of Police and Firemen's Retirement System* (2008) 399 N.J.Super. 51; *Fike v. Board of*
28 *Trustees, Teachers' and State Emp. Retirement System* (1981) 53 N.C.App. 78; *Kentucky*

1 *Retirement Systems v. Fryrear* (2009) 316 S.W.3d 307.)

2 The requisite elements for equitable estoppel are the same whether applied against a
3 private party or the government: (1) the party to be estopped was apprised of the facts, (2) the
4 party to be estopped intended by conduct to induce reliance by the other party, or acted so as to
5 cause the other party reasonably to believe reliance was intended, (3) the party asserting estoppel
6 was ignorant of the facts, and (4) the party asserting estoppel suffered injury in reliance on the
7 conduct. (*Mansell, supra*, at 489.)

8 Although estoppel is generally a question of fact, when the evidence is not in conflict and
9 is susceptible of only one reasonable inference, the existence of an estoppel is a question of law.
10 (*Driscoll v. City of Los Angeles* (1973) 67 Cal.2d 297, 305.) Further, an estoppel binds not only
11 the immediate parties to the transaction but those in privity with them. (*Crumpler, supra*, at 582-
12 584 [finding that city and the board of public employees' retirement system were in privity with
13 each other as agents of the state, and, therefore, estoppel of city from asserting that petitioners
14 had been erroneously classified necessarily extended to board].)

15 In *Crumpler*, a California appellate court applied estoppel against the PERS Board.
16 *Crumpler* involved the question of whether CalPERS was estopped from reclassifying petitioners
17 retroactively, based on the fact that petitioners had taken jobs with the City of San Bernardino
18 Police Department as animal control officers after being told they would be classified as local
19 safety members and receive CalPERS benefits based on that classification. Years later, the
20 executive officer of the PERS Board determined that petitioners had been erroneously classified
21 as local safety members and reclassified them into miscellaneous membership. This resulted in
22 petitioners being required to wait until age 65 to receive substantial retirement benefits, when
23 under their original classification they were entitled to such benefits at age 55. (*Crumpler*, at
24 572-573.) Petitioners decided to originally accept employment with the city police department at
25 least in part on the basis of being advised that they would receive retirement benefits as local
26 safety members. (*Id.*)

27 The *Crumpler* court held that the Board (by virtue of its privity with the City) was
28 estopped from reclassifying petitioners *nunc pro tunc* as of the date they became PERS members

1 on the following grounds:

2 All of the requisite elements of equitable estoppel are
3 present...The city was apprised of the facts. The city knew that
4 petitioners were being employed by the police department as
5 animal control officers at the time it erroneously advised them they
6 would be entitled to retirement benefits as local safety members.
7 **The fact that the advice may have been given in good faith does
8 not preclude the application of estoppel.** Good faith conduct of a
9 public officer or employee does not excuse inaccurate information
10 negligently given. [Citation]. **In a matter as important to the
11 welfare of a public employee as his pension rights, the
12 employing public agency "bears a more stringent duty" to
13 desist from giving misleading advice. (*Driscoll v. County of Los
14 Angeles, Supra*, 67 Cal.2d 297, 308, 61 Cal.Rptr. 661, 431 P.2d
15 245.).... All of the other requisite elements of equitable estoppel
16 against the city were established by uncontradicted evidence. The
17 city manifestly intended its erroneous representations to be acted
18 upon and petitioners had a right to believe the city so intended.
19 Petitioners were ignorant of the fact that the city's advice was
20 erroneous. Petitioners relied upon the representations to their
21 injury by relinquishing other employment to accept city
22 employment and by paying over the years the greater contributions
23 required of safety members. Petitioner Crumpler served as animal
24 control officer for over 20 years. During those years he paid safety
25 member contributions and arranged his personal financial affairs in
26 the expectation he would ultimately receive the retirement benefits
27 of a safety member. Petitioner Ingold relinquished federal civil
28 service employment with 15 years accrued federal pension rights
to accept city employment on the representation that his city
pension rights would be that of a safety member.**

(*Crumpler, supra*, at 583, emphasis added.)

21 The California Supreme Court has expressly recognized the "unique importance of
22 pension rights to an employee's well-being" and affirmed the application of estoppel against
23 government retirement agencies to protect those rights, particularly in cases where "employees
24 were induced to accept and maintain employment on the basis of expectations fostered by
25 widespread, long-continuing misrepresentations. (*Longshore v. County of Ventura* (1979) 25
26 Cal.3d 14, 28.) Under such circumstances, **"the potential injustice to employees or their
27 dependents clearly outweigh[s] any adverse effects on established public policy."** (*Id.*,
28 emphasis added.)

1 **B. Exceptions to the Application of Equitable Estoppel Do Not Apply**

2 The courts have held that estoppel may not be applied against the government (1) when
3 doing so "would effectively nullify a strong rule of policy, adopted for the benefit of the public"
4 (*City of Long Beach v. Mansell, supra*, at 493; internal citation omitted), or (2) where "the
5 governmental entity in question utterly lacks the power to effect that which an estoppel against it
6 would accomplish" (*Id.* at 499).

7 As to the first exception, while estoppel may be inappropriate if applying it against the
8 government "would effectively nullify a strong rule of public policy, adopted for the benefit of
9 the public", the corollary is equally important – that estoppel is appropriate and should be
10 applied when doing so will uphold an even stronger "rule of public policy, adopted for the
11 benefit of the public".

12 This is exactly what occurred in *Mansell*. The Supreme Court was confronted with a
13 situation where the California *Constitution's* prohibition against the alienation of tidelands barred
14 the conversion of such tide lands to private ownership, but a portion of such tidelands in the City
15 of Long Beach had been filled in over a period of many decades, developed by private investors
16 and then sold to homeowners. Upholding the constitutional prohibition against alienation would
17 have required taking title away from the homeowners.

18 In considering whether the State of California and the City of Long Beach should be
19 estopped from asserting title to the tidelands, the Court set forth the following standard:

20 It is settled that "[t]he doctrine of equitable estoppel may be
21 applied against the government where justice and right require it.
22 (*United States Fid. & Guar. Co. v. State Board of Equalization*
23 (1956) 47 Cal.2d 384, 388-389 [303 P.2d 1034] and cases there
24 collected.)" (*Driscoll v. City of Los Angeles, supra*, 67 Cal.2d 297,
25 306.) (See generally 28 Am. Jur.2d, Estoppel and Waiver, §§ 122-
26 133, pp. 782-802; 31 C.J.S., Estoppel, §§ 138-147, pp. 675-733.)
27 Correlative to this general rule, however, is the well-established
28 proposition that an estoppel will not be applied against the
government if to do so would effectively nullify "a strong rule of
policy, adopted for the benefit of the public," (*County of San
Diego v. Cal. Water etc. Co.* (1947) 30 Cal.2d 817, 829-830 [186
P.2d 124, 175 A.L.R. 747], see also cases there cited.) *The tension
between these twin principles makes up the doctrinal context in*

1 *which concrete cases are decided.*

2 (*City of Long Beach v. Mansell, supra*, at 493, italics added.)

3 In other words, a court must *balance* the appropriateness of estoppel against the
4 government by weighing a "strong rule of policy, adopted for the benefit of the public" against
5 situations "where justice and right require" estoppel. *Mansell* clarifies that there are "exceptional
6 cases" where estoppel *is very much appropriate*.

7 The Supreme Court then took note of a "strong rule of policy, adopted for the benefit of
8 the public" (i.e., the prohibition on the alienation of tidelands), but it found that it was
9 outweighed by the even *stronger* interest to settle title and boundary issues. The Supreme Court
10 allowed the sale of tidelands contrary to a prohibition against their alienation, instead
11 quitclaiming the tidelands in question to those who had lived on the property for decades. As the
12 Supreme Court put it:

13 We are here concerned with thousands of homeowners who,
14 through the long continuing conduct of the government entities
15 involved, have been led to believe and have acted upon the belief
16 that the lands upon which they reside are their own private
17 properties. Because similarly compelling circumstances will not
18 often recur, the public policy expressed in article XV, section 3, of
19 the Constitution will not suffer substantial erosion as a result of the
20 decision we reach today.

21 (*Mansell, supra*, at 500.)

22 Implicit in *Mansell's* "tension" doctrine is correctly identifying the "strong rule of policy,
23 adopted for the benefit of the public" being weighed. CalPERS appears to claim that the "strong
24 rule of public policy" in the instant case is its interpretation of *Government Code* section 20638
25 as it relates to Guido's establishment of reciprocity between CalPERS and LACERA. But there is
26 are much higher and more significant "strong rules of public policy" that have been "adopted for
27 the benefit of the public" in (i) the *Constitution's* mandate that "[a] retirement board's duty to its
28 participants and their beneficiaries shall take precedence over any other duty" (*California*
Constitution, Art. XVI, Sec. 17(b)), as well as (ii) the board's "fiduciary duty to provide timely
and *accurate* information to its members" (*City of Oakland, supra*, at 40).

1 There are also numerous other public policies supporting the imposition of estoppel
2 against CalPERS in this case, including: (i) honoring CalPERS' Constitutional duties to put the
3 beneficiaries' interests first; (ii) the unique importance of pension rights to an employee's well-
4 being; (iii) providing incentives for increased correct communications between pensioners and
5 government retirement plans; (iv) providing relief to employees who were induced to accept and
6 maintain employment on the basis of expectations fostered by long-continuing
7 misrepresentations by their retirement systems; (v) enforcing a situation where the entity with
8 more information and expertise is held responsible for correctly providing information in a
9 timely manner; (vi) as is consistent with a retirement plan, spreading the "cost" over a larger set
10 of pensioners rather than making Guido singularly bear the entire cost of an incident for which
11 he is not to blame; (vii) providing the promised life-long benefit as in *Driscoll, supra*; (viii)
12 providing incentive for CalPERS to improve its informational practices; (ix) preventing
13 situations where at the end of a government employee's working life, the promised benefit is
14 drastically reduced; and (x) other important policies.

15 Whether viewed as a statute or otherwise, the policy of *Government Code* section 20638
16 is trumped by the larger, stronger public interest in ensuring that CalPERS abides by its
17 constitutional and fiduciary duties, including to timely and accurately inform its membership.
18 The ability to meaningfully rely on CalPERS' information affects 1.5 million Members and the
19 general public.

20 Implicit in the *Mansell* opinion is the requirement that a court first identify the
21 *preeminent* public policy involved, and then balance the upholding of *that* policy against the
22 harm alleged by the party seeking estoppel to determine if it is one of those "exceptional cases"
23 where "justice and right require" estoppel.

24 Further, the strong rule of public policy in this case *supports* estoppel. There is no
25 conflict between the "strong rule of policy, adopted for the benefit of the public" (i.e., the
26 constitutional and fiduciary duties to put the interests of the Members first and to fully and
27 accurately inform them as outlined above) and Guido's interest in estoppel against CalPERS
28 (stemming from CalPERS' repeatedly informing Guido that he had established reciprocity

1 between his CalPERS and LACERA credit and would earn eventual pension benefits based on
2 his highest LACERA earnings, and the impact this advice had on the career and retirement
3 choices Guido made). Only the weak rule of *Government Code* section 20638, which is at odds
4 both with the constitutional fiduciary duties and estoppel, argues to deny Guido the reciprocity
5 he was assured by CalPERS and the increased pension benefits flowing therefrom.

6 As to the second exception, CalPERS clearly does "possess the authority to do what it
7 appeared to be doing", i.e., to permit Guido to establish reciprocity between his CalPERS and
8 LACERA service. Much of this authority is found in *Government Code* section 20160 (one of
9 the so-called "correction statutes") which require CalPERS to correct any errors or omissions of
10 the pension system throughout the lifetimes of the affected Member and his or her beneficiaries.

11 Only weeks ago the Third Appellate District issued a published opinion in the case of
12 *Welch v. California State Teachers Retirement Bd.* (2012 WL 273603, Third Appellate District,
13 January 31, 2012). Melanie Welch was violently attacked by a group of students shortly after she
14 began her first teaching job and never worked as a full-time teacher again. The case involved her
15 claim that the California State Teachers' Retirement System ("CalSTRS") misinformed Welch of
16 her right to apply for disability retirement shortly after the incident and she did not learn that she
17 had in fact been so entitled until six years later.

18 The court ruled that the CalSTRS Board had improperly rejected Welch's eventual
19 disability retirement application for her failure to show a continuing disability, finding that
20 CalSTRS' misinformation about eligibility for disability retirement shortly after she was attacked
21 had thereby prevented her from timely compiling the evidence of her disability required by the
22 CalSTRS Board. It then estopped CalSTRS from summarily denying Welch's disability
23 application and ordered the Board to reconsider the matter in light of its misinformation to
24 Welch and the impact that had on her ability to gather relevant evidence based on the Board's
25 duty to correct its errors and omissions pursuant to *Education Code* section 22308.

26 Important to the case herein, the appellate court compared CalSTRS *permissive* duty to
27 correct under Section 22308 with CalPERS' *mandatory* duty to do so found in the language of
28 *Government Code* section 21060:

1 As Welch points out, subdivision (b) of Government Code section 20160 provides
2 that CalPERS "shall correct all actions taken as a result of errors or omissions of
3 the university, any contracting agency, any state agency or department, or this
4 system." (*Italics added.*) According to Welch, while section 22308, subdivision (c)
5 uses the word "may" instead of "shall," we should construe the statute that applies
6 to CalSTRS to have the same meaning as the one that applies to CalPERS,
7 especially because section 22308, subdivision (d) refers to "[t]he *duty* and the
8 power of [CalSTRS] to correct errors and omissions, as provided in this section."
9 (*Italics added.*) Welch suggests that the reference to a "duty" to correct errors
10 requires us to construe the word "may" in section 22308, subdivision (c) as
11 meaning the same as the word "shall" in Government Code section 20160,
12 subdivision (b).

13 We disagree, because the statutory history of both statutes supports the conclusion
14 that the Legislature intended to give both words their usual meanings, with "may"
15 being permissive and "shall" being mandatory. In 1988, the Legislature enacted
16 the predecessor to section 22308 (former § 22233) at the same time it enacted the
17 predecessor to Government Code section 20160 (former Gov. Code, § 20180).
18 (*Stats. 1988, ch. 1089, §§ 2, 5, pp. 3512-3514.*) In the statute applying to the
19 predecessor of CalSTRS, the Legislature used the word "may" (*id.*, § 2, at p.
20 3513); in the statute applying to CalPERS, the Legislature used the word "shall"
21 (*id.*, § 5, at p. 3514). We have no reason to believe this was an oversight.
22 Moreover, the use of the word "duty" in section 22308, subdivision (c) (which is
23 also traceable to the predecessor statute) (*see Stats. 1988, ch. 1089, § 2, p. 3513*)
24 is easily reconcilable with the use of the word "may" in section 22308,
25 subdivision (c). As we see it, the "power" of CalSTRS to correct errors or
26 omissions in the exercise of its discretion that is expressed with the use of the
27 word "may" becomes a "duty" under those circumstances where to take any other
28 action would constitute an abuse of discretion.

19 In this manner, section 22308 is internally consistent, and its meaning is not
20 altered by the different language the Legislature chose to use in the correction
21 provision applicable to CalPERS.

22 We therefore conclude that, under the facts presented here, as found by the trial
23 court, CalSTRS had the power and the duty, to correct the actions taken as a result
24 of the misinformation CalSTRS provided Welch in 1999 regarding the eligibility
25 requirements for disability retirement benefits. It was an abuse of discretion for
26 CalSTRS not to consider whether to apply section 22308 to this case, and if so
27 how. To the extent the trial court implicitly concluded otherwise, by concluding
28 that Welch was not disabled in 1999 and therefore could not have presented better
evidence of disability at that time even in the absence of the misinformation from
CalSTRS, the trial court erred. The matter must be remanded to CalSTRS for
CalSTRS to consider, in the first instance, the proper application of section 22308
here. In doing so, CalSTRS must fairly consider how its misinformation to Welch

1 in 1999 affected her ability to provide CalSTRS with contemporaneous medical
2 documentation of her psychological condition, and *CalSTRS must strive to the*
3 *fullest extent possible to relieve Welch of the disadvantage she suffered because of*
4 *that lost opportunity*. Section 22308 requires no less.

(*Welch, supra*, italics in original.)

5 The Third District found that CalSTRS had misinformed Ms. Welch sufficient to justify
6 estoppel based on a single case of telephonic misinformation. Given that CalPERS consistently
7 and continually informed Guido that he had been granted reciprocity between his CalPERS and
8 LACERA service and could expect to earn a retirement allowance based on his highest
9 LACERA earnings, the findings in *Welch* should have even more force and effect in this case.

10 **C. Balancing Competing Public Policies**

11 Where estopped is sought against the government, "the weighing of policy concerns" is,
12 in part, a question of law. (*Lentz v. McMahon* (1989) 49 Cal.3d 393, 403.) While there is a strong
13 public policy in favor of CalPERS providing timely and accurate information to its Members,
14 *there is no public policy that explicitly encourages the barring of recovery for a Member's*
15 *reliance on CalPERS incorrect information.*

16 **D. CalPERS' Representations to Guido**

17 As described in detail above, CalPERS advised Guido for years that he had established
18 reciprocity between his CalPERS and LACERA service and would therefore earn an eventual
19 pension based on his highest LACERA earnings:

- 20 • On October 6, 2003, CalPERS wrote Fred Guido that:

21 CalPERS has reviewed your account and determined that
22 Reciprocity has been established between CalPERS and LACERA.
23 Since you have established Reciprocity, CalPERS will use the
24 highest final compensation earned under either system as long as
25 you retire on the same date under both systems and you are not an
26 "Elective or Appointed Officer" on or after July 1, 1994.

27 Please provide us with your final compensation amount with
28 LACERA. That final compensation amount may be higher than
your final compensation amount is with CalPERS.

(EXHIBIT 1.)

- 1 • CalPERS' October 2, 2007 retirement estimate that it provided to Guido included the
2 City of Cudahy as a CalPERS Employer and listed his Final Compensation as
3 \$11,838.00 which would have entitled him to greater than \$3,000 a month in a
4 CalPERS pension under reciprocity. (EXHIBIT 3.)
- 5 • Then again on October 20, 2008, *less than seven (7) months before his planned*
6 *retirement, CalPERS again confirmed reciprocity* and wrote Guido that:

7 CalPERS has reviewed your account and determined that
8 Reciprocity has been established between CalPERS and LACERA.

9 Per your request, CalPERS has used the final compensation
10 amount of \$11,838.00 with LACERA. The information in this
11 estimate has been provided by you and has not been verified by
12 your employer. Any changes to your final compensation could
13 affect your retirement estimate and a new estimate would need to
14 be requested.

15 (EXHIBIT 2.)

- 16 • On April 7, 2009, Guido filed his Service Retirement Election Application at the
17 Regional CalPERS Office in Glendale, California, indicating that he was retiring
18 from two public employment systems on June 1, 2009 and that he would be using his
19 single highest year of salary with LACERA for purposes of calculating his benefits
20 from both CalPERS and LACERA. The CalPERS representative in Glendale who
21 reviewed his application consulted Guido's electronic file in the CalPERS database
22 and validated that reciprocity was established at the time that Guido filed his
23 retirement application.

24 In sum, CalPERS repeatedly and consistently advised Guido over the course of five and a
25 half years that he had established reciprocity between his CalPERS and LACERA service, and
26 that he had the right to have his pension allowance calculated based on his highest earnings,
27 which in this case were his earnings in his LACERA position. All of this advice very directly
28 informed Guido's career choices, including his decision to forego taking a CalPERS-covered
 position later in his career to establish a higher final compensation amount in that pension system
 alone, as well as Guido's decision to retire when he did.

1 **E. CalPERS Is Estopped From Now Rescinding Reciprocity Between Guido's**
2 **CalPERS and LACERA Service**

3 The doctrine of equitable estoppel is based on the theory that the party estopped has
4 misled the other party to its prejudice, and may be applied against a governmental body where
5 justice and right require it. (*Piazza Properties, supra; Emma Corp. v. Inglewood Unified School*
6 *District* (2004) 8 Cal.Rptr. 3d 213.) Whenever a party has, by his own statement or conduct,
7 intentionally and deliberately led another to believe a particular thing to be true and to act upon
8 such belief, he is not, in any litigation arising out of such statement or conduct, permitted to
9 contradict it. (*Leasequip Inc. v. Dapeer* (2002) 103 Cal.App.4th 394; *California Evidence Code*
10 § 623.)

11 The requisite elements for equitable estoppel are met in this case: (1) The party to be
12 estopped (CalPERS) was apprised of the facts; (2) the party to be estopped (CalPERS) intended
13 by its conduct to induce reliance by the other party (Guido) on the communications from
14 CalPERS stating that reciprocity between his CalPERS and LACERA service had been
15 established (and acting in such a way as to cause Guido reasonably to believe reliance was
16 intended); (3) the party asserting estoppel (Guido) was ignorant of the facts; and (4) the party
17 asserting estoppel (Guido) suffered injury in reliance on CalPERS' conduct, to wit: he both
18 relinquished the opportunity to seek employment in a CalPERS-covered position and thereby
19 increase the final compensation amount to be used in calculating his eventual CalPERS pension,
20 even if reciprocity would not apply concerning his LACERA service, and he retired at the time
21 he did and thereby ended his career, only to find that he would be receiving a far smaller pension
22 allowance from CalPERS than he had been promised.

23 If those estoppel elements are established against the government, the court must then
24 balance (i) the burden on the party asserting estoppel if the doctrine is not applied against (ii) the
25 public policy that would be affected by the estoppel. (*Lentz v. McMahon, supra*, at 400-401.)

26 If for purposes of argument the Public Employees' Retirement Law or PERL
27 (*Government Code*, §§ 20000, *et seq.*) does not permit Guido to have established reciprocity
28 between his CalPERS and LACERA service, then CalPERS misled Guido, by its own statements

1 and conduct, to believe that he was entitled to establish reciprocity and had, in fact, done so, and
2 that he would receive increased retirement benefits for life based on that.

3 As the doctrine of equitable estoppel states, justice and right require that CalPERS be
4 estopped from now withdrawing reciprocity concerning Guido's CalPERS and LACERA service.

5 **II. CALPERS' BREACH OF CONSTITUTIONAL AND FIDUCIARY DUTIES**
6 **OWED TO GUIDO**

7 Very much at the heart of this claim is the fact that CalPERS owes extremely high
8 fiduciary duties to Guido, including those mandated by the California *Constitution* which
9 dictates that "[a] retirement board's duty to its participants and their beneficiaries shall take
10 precedence over any other duty." (California *Constitution*, Art. XVI, Sec. 17(b).)

11 Moreover, the constitutional duties are not simply general statements of responsibility.
12 Rather, they must actually guide CalPERS' day-to-day communications with its Members, such
13 as Guido, including imposing a specific duty of care on CalPERS to ensure the accuracy of its
14 communications with its Members.

15 As the California Court of Appeals ruled in *City of Oakland v. Public Employees'*
16 *Retirement System* (2002) 95 Cal.App.4th 29, "[CalPERS] owes a fiduciary duty to provide
17 timely and *accurate* information to its members". (*City of Oakland, supra*, at 40, italics in
18 original.) CalPERS itself has recognized this same duty to accurately inform in its precedential
19 decision *In Re Application of Smith*, where CalPERS adopted the *Proposed Decision* of the ALJ
20 stating, "[t]he duty to inform and deal fairly with members also requires that the information
21 conveyed be complete and unambiguous." (*In Re Application of Smith*, March 31, 1999, PERS
22 Precedential Decision No. 99-01.)

23 CalPERS has a special relationship with Guido. CalPERS Members such as Guido repose
24 great trust and confidence in CalPERS.

25 In the instant case, however, CalPERS essentially acts as if the duty to accurately inform
26 Members such as Guido is meaningless – that CalPERS' prior representations to him, *made over*
27 *the course of more than five years*, carry no weight whatsoever so long as CalPERS *now* claims
28 that the PERL allegedly requires a different result than what was earlier promised.

1 **A. CalPERS Breached Its Fiduciary Duties Owed to Guido**

2 Under California law, a breach of fiduciary duty includes (1) the existence of fiduciary
3 relationship giving rise to fiduciary duty; (2) breach of that duty; and (3) damage proximately
4 caused by the breach. (*Estate of Migliaccio v. Midland Nat'l. Life Ins. Co.*, 436 F.Supp.2d 1095.)

5 CalPERS' unjust denial of Guido's reciprocity with LACERA meets each of the elements
6 to bring a breach of fiduciary claim against CalPERS.

7 **B. The Existence of A Fiduciary Relationship Giving Rise to Fiduciary Duty**

8 CalPERS and Guido were engaged in a fiduciary relationship giving rise to a fiduciary
9 duty. It has been held that the administrator of a pension is a fiduciary in its relationship with its
10 pensioner. In *Hittle v. Santa Barbara County Employees Retirement Assn.* (1985) 39 Cal.3d 374,
11 392-393, the Supreme Court concluded that trustees who administer pension plan retirement
12 funds owe fiduciary duties of good faith and fair dealing towards the pensioner-beneficiaries.

13 Similarly, in *Masters v. San Bernardino County Employees Retirement Assn.* (1995) 32
14 Cal.App.4th 30, 43-45, the court acknowledged the existence of fiduciary duties owed by a
15 retirement plan and its administrator to a pension plan beneficiary. Pensions and retirement
16 systems have fiduciary obligations to deal fairly and have a duty to inform employees.

17 CalPERS is an administrator of pensions and is in a fiduciary relationship with its
18 Members, specifically Guido. CalPERS also has fiduciary duties to its Member-beneficiaries
19 which have a Constitutional basis in Article XVI, Section 17, of the California Constitution.

20 CalPERS' other fiduciary duties as provided by statute.

21 As seen by both case law and statute, CalPERS had a duty to deal with Guido fairly and
22 in good faith. Included within the fiduciary obligation is the duty to fully inform its Members of
23 their options in obtaining retirement benefits, as stated in CalPERS' own Precedential Board
24 decision, *In re William R. Smith*, No. 99-01.

25 **C. CalPERS' Breach of Fiduciary Duty**

26 CalPERS breached this duty by failing to fully inform and/or correctly inform Guido of
27 reciprocity.

28 In *Hittle, supra*, the court found that a handwritten notation on a form letter from a

1 county retirement association to an injured former county employee, briefly mentioning the
2 possibility of filing for disability retirement, was inherently ambiguous and uninformative, and
3 could not be said to have satisfied the association's fiduciary obligation to adequately inform the
4 employee. The association did not fulfill its fiduciary duty to the employee to deal fairly and in
5 good faith. The court also found that the means by which the association sought to inform the
6 employee of his options in disposing of his retirement contributions were tantamount to the
7 misrepresentation and concealment, however slight, prohibited by *California Civ. Code*, § 2228.

8 (*Id.*)

9 CalPERS breached its duty to Guido by failing to fully inform and/or correctly inform
10 him about the establishment of reciprocity between his CalPERS and LACERA service and the
11 impact this would have on his eventual pension allowance. Time and again, CalPERS explicitly
12 presented information to Guido showing that he was entitled to reciprocity.

13 **D. Damage to Guido Caused By CalPERS' Breach**

14 Due to CalPERS' breach, Guido suffered serious, long-term and irrevocable damage. If
15 CalPERS had informed Guido that he was not entitled to reciprocity, Guido could have forgone
16 employment at a Department of Los Angeles County position covered by LACERA and taken a
17 different job with an agency that provided CalPERS benefits.

18 Guido suffered a loss because of CalPERS' breach of fiduciary duty to correctly inform
19 him of reciprocity.

20 **CONCLUSION**

21 Guido is entitled to be granted reciprocity and have his CalPERS pension benefit
22 calculated pursuant to reciprocity with LACERA. Due to the foregoing reasons, Guido
23 respectfully requests the court to find that CalPERS must grant Guido reciprocity and increase
24 his CalPERS retirement for the additional years of service and additional salary earned at
25 LACERA.

26 Dated: February 20, 2012

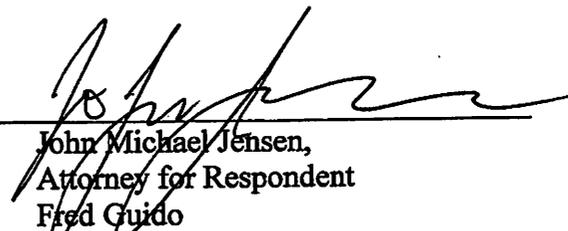
27 By: 
John Michael Jensen,
Attorney for Respondent
Fred Guido

EXHIBIT 1



Member Services Division
P.O. Box 942717
Sacramento, CA 94229-2717
(888) 225-7377; FAX (916) 231-7878
Telecommunications Device for the Deaf – (916) 326-3240

October 6, 2003

Fred Guido


Dear Fred Guido:

Thank you for your recent Retirement Estimate request.

CalPERS has reviewed your account and has determined that Reciprocity has been established between CalPERS and LACERA. Since you have established Reciprocity, CalPERS will use the highest final compensation earned under either system as long as you retire on the same date under both systems and you are not an "Elective or Appointed Officer" on or after July 1, 1994.

Please provide us with your final compensation amount with LACERA. That final compensation amount may be higher than what your final compensation amount is with CalPERS. Please fill out the attached estimate request form and complete part 7 at the bottom so we will have the information needed to calculate your retirement benefits. We have also included the publication "When You Change Retirement Systems" which explains Reciprocity in full detail.

If you have any questions that you don't feel the publication can answer, please don't hesitate to give us a call at (888) 225-7377.

Retirement Estimate Unit
Member Services Division

California Public Employees' Retirement System

10-3-03



Member Services Division
P.O. Box 942717
Sacramento, CA 94229-2717
(888) 225-7377; FAX (916) 231-7878
Telecommunications Device for the Deaf - (916) 329-3240

Fred Guido
[REDACTED]

Dear Fred Guido:

Attached is an estimate of your retirement allowance as you requested. The information provided in this estimate is based on the information you provided us and may not be consistent with the information CalPERS has on file.

Your estimate request for a Future Final Compensation Amount includes the following assumption(s):

- Your final compensation will be \$10,000.00 at time of your retirement.

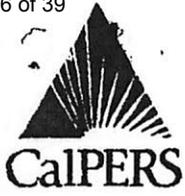
If you have any questions, please do not hesitate to contact us.

Retirement Estimate Unit
Member Services Division

Unofficial

Estimate contains information that has not been validated.

California Public Employees' Retirement System



Member Services Division
P.O. Box 942717
Sacramento, CA 94229-2717
(888) 225-7377 Fax (916) 231-7878
Telecommunications Device For
The Deaf - (916) 326-3240

MEMBER INFORMATION

Date: 10/29/2003
Social Security Number: [REDACTED]
Your Date of Birth: [REDACTED]
Beneficiary Date of Birth: [REDACTED]

Fred Guido
[REDACTED]

Dear Fred Guido:

This is an estimate of your Service Retirement. An estimate is a calculation of potential future benefits based on the following assumptions:

- Current pay rates reported by the employer
- Current retirement law
- Information provided by you

The following information was used to calculate your retirement estimate for 09/01/2008 :

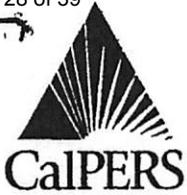
Employer Name	Years of Service	Formula/ Benefit Factor	% of Final Compensation	Final Compensation
City Of Cudahy	6.800	2% @ 55/ 2.262	15.382	\$ 10,000.00
City Of Cudahy	5.448	2% @ 55/ 2.262	12.323	\$ 10,000.00

Final Compensation is your highest average monthly pay rate for the last consecutive 12 or 36 months of employment based on your employers' contract. The final compensation dollar amount shown is unmodified. If a member contributes to Social Security they will need to subtract \$133.33 from their final compensation to obtain the dollar amount that was used to calculate the estimate. Any change in the information will result in a different benefit calculation.

PLEASE SEE IMPORTANT INFORMATION ON NEXT PAGE

EXHIBIT 2

10-1-01



Member Services Division
P.O. Box 942717
Sacramento, CA 94229-2717
(888) CalPERS (or 888-225-7377)
TDD - (916) 795-3240
FAX - (916) 795-7878

Fred Guido



Dear Fred Guido:

Attached is an estimate of your retirement allowance as you requested. The information provided in this estimate is based on the information you provided us and may not be consistent with the information CalPERS has on file.

Your estimate request for a Future Final Compensation Amount includes the following assumption(s):

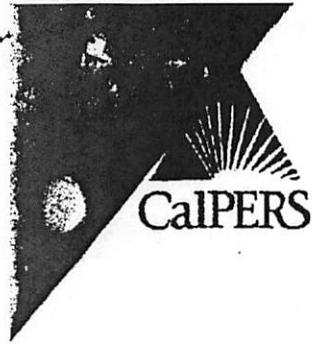
- Your final compensation will be \$11,775.00 at time of your retirement.

If you have any questions, please do not hesitate to contact us.

Retirement Estimate Unit
Member Services Division

Estimate contains information that has not been validated.

California Public Employees' Retirement System
www.calpers.ca.gov



Member Services Division
P.O. Box 942717
Sacramento, CA 94229-2717
888 CalPERS (or 888-225-7377)
TDD - (916) 795-3240
FAX - (916) 795-7878

Fred Guido
[REDACTED]

MEMBER INFORMATION

Date: 10/02/2007
Social Security Number: [REDACTED]
Your Date of Birth: [REDACTED]
Beneficiary's Date of Birth: [REDACTED]

ESTIMATE INFORMATION

Retirement Date: 01/26/2009
Age at Retirement: 60.25
Total Years of Service Credit at Retirement: 12.248

Dear Fred Guido:

This is an estimate of your Service Retirement. An estimate is a calculation of potential future benefits based on the following assumptions:

- Current pay rates reported by the employer
- Current retirement law
- Information provided by you

On page 3 of your retirement estimate, you are shown approximately what you would receive as a retirement allowance should you retire on 01/26/2009. When you apply for retirement, you will be required to select one of the retirement options shown. This is an irrevocable election.

The results are broken down by the following:

For You - This is the estimated monthly allowance you will receive for the Unmodified Allowance or one of the other retirement options.

For Your Beneficiary - This is the estimated monthly allowance your beneficiary will receive. Your beneficiary can be anyone you choose and does not need to be a spouse or relative. Based on the option selected at retirement your beneficiary may receive a lump sum payment or a monthly allowance after your death. There is no amount shown for the Unmodified Allowance since this option does not provide for a beneficiary after your death.

For You, If Your Beneficiary Predeceases You - This is the monthly allowance you are entitled to receive should your beneficiary die before you.

Fréd'Guido

XX

The information below was used to calculate your retirement estimate for 01/26/2009, at age 60.25.

Employer Name	Years of Service	Formula/ Benefit Factor	% of Final Compensation	Final Compensation
City Of Cudahy	6.800	2% @ 55/ 2.274	15.463	\$ 11,775.00
City Of Cudahy	5.448	2% @ 55/ 2.274	12.389	\$ 11,775.00

IMPORTANT INFORMATION ABOUT THE CALCULATION

Final compensation is your highest average monthly pay rate for 12 or 36 months of consecutive employment based on your employer's contract. The final compensation dollar amount(s) shown have not been modified, most members that contributed to Social Security at any time during their CalPERS' employment should subtract \$133.33 from that employer's final compensation to obtain the dollar amount that was used to calculate the estimate. Certain exceptions may exist such as School members with service credit earned on or after January 1, 2001, or State Second Tier Members. Any change in the information will result in a different benefit calculation.

Any change in your years of service, benefit factor, or final compensation will result in a different benefit calculation. You should also keep in mind the following:

Guido

XXX-XX-XXXX

Retirement Date: 01/26/2009 Age at Retirement: 60.25

Unmodified Allowance Highest allowance payable. Benefit ends at your death. The only benefit payable is the lump sum death benefit.	For You	\$ 3,279
OPTION 1 Less than the Unmodified Allowance but provides that if there are any member contributions remaining at the time of your death the balance would be paid to your designated beneficiary(ies) in a lump sum. The Option 1 allowance does not provide for a monthly allowance to a beneficiary after the member's death.	For You	\$ 3,278
	For Your Beneficiary	Your total contributions of \$ 6,023.94 will be reduced by \$ 48 for each month that you receive an allowance. Your contributions will be reduced to zero in approximately 10.38 years.
	For You, if Your Beneficiary Predeceases You.	\$ 3,278
OPTION 2 X Lowest monthly allowance payable to you. Upon your death, CalPERS pays out the same monthly allowance. Returns to the Unmodified Allowance amount if your beneficiary predeceases you.	For You	\$ 2,987
	For Your Beneficiary	\$ 2,987
	For You, if Your Beneficiary Predeceases You	\$ 3,279
OPTION 2W This is just like Option 2, except it does not return to the Unmodified Allowance amount if your beneficiary predeceases you. In exchange, the allowance to you and your beneficiary is slightly higher.	For You	\$ 3,043
	For Your Beneficiary	\$ 3,043
	For You, if Your Beneficiary Predeceases You	\$ 3,043
OPTION 3 Provides a higher allowance than under Option 2, but upon your death your beneficiary receives a lower allowance. Returns to the Unmodified Allowance amount if your beneficiary predeceases you.	For You	\$ 3,125
	For Your Beneficiary	\$ 1,562
	For You, if Your Beneficiary Predeceases You	\$ 3,279
OPTION 3W This is just like Option 3, except it does not return to the Unmodified Allowance amount if your beneficiary predeceases you. In exchange, the allowance to you and your beneficiary is slightly higher.	For You	\$ 3,158
	For Your Beneficiary	\$ 1,579
	For You, if Your Beneficiary Predeceases You	\$ 3,158

Fred Guido

X

Things to remember...

- When planning your retirement you may want to consider how your retirement date affects your first cost of living increase. Cost of living increases are provided by law and are based on the consumer price index for all United States cities. For more information, visit the CalPERS website at www.calpers.ca.gov.
- If you have contributed to Social Security and would like to know how it impacts your retirement, you can contact the Social Security Administration at 1-800-772-1213 or by visiting their web site at www.ssa.gov.

CALPERS WEB SITE

You have taken an important step in planning your retirement by requesting an estimate of your retirement allowance. You may obtain additional information on all programs administered by CalPERS by logging on to our web site at www.calpers.ca.gov.

You can use the CalPERS Retirement Calculator to help estimate your future retirement benefits. The Retirement Planning Calculator can be used with or without a Password. If a Password is used the information from your latest Annual Member Statement will be automatically added to the calculator. Using the Retirement Planning Calculator without a Password enables you to add various retirement dates, salary information, and future employment information to see how these changes would impact your future retirement benefits. To obtain this Password register for the online access at the CalPERS web site listed above.

CalPERS suggest all members attend one of our free Retirement Financial Planning Seminars or Retirement Planning Workshops. The CalPERS website makes it easy and convenient to review dates and locations, and register to attend one of these sessions.

SEE THE FOLLOWING PAGE FOR MORE INFORMATION

EXHIBIT 3



Member Services Division
P O Box 942717
Sacramento, CA 94229-2717
Telecommunications Device for the Deaf -- (916) 795-3240
888 CalPERS (or **888-225-7377**), FAX (916) 795-7878

October 20, 2008

Fred, Guido



Dear Fred Guido

Thank you for your recent Retirement Estimate request

CalPERS has reviewed your account and determined that Reciprocity has been established between CalPERS and LACERA

Per your request, CalPERS has used the final compensation amount of \$11,838 00 with LACERA. The information in this estimate has been provided by you and has not been verified with your employer. Any changes to your final compensation could affect your retirement estimate and a new estimate would need to be requested.

Additional information regarding reciprocity may be found on the CalPERS web site www.calpers.ca.gov

If you have any additional questions, please contact our Customer Contact Center at **888 CalPERS** (or **888-225-7377**)

Retirement Estimate Unit
Member Services Division

Unofficial
Estimate contains information that has not been validated.



Member Services Division
P O Box 942717
Sacramento, CA 94229-2717
888 CalPERS (or 888-225-7377)
TDD - (916) 795-3240
FAX - (916) 795-7878

Fred Guido
[Redacted]
[Redacted]
119

MEMBER INFORMATION

Date 10/20/2008
Social Security Number [Redacted]
Your Date of Birth [Redacted]
Beneficiary's Date of Birth [Redacted]

ESTIMATE INFORMATION

Retirement Date 03/05/2009
Age at Retirement 60 50
Total Years of Service Credit at Retirement 12 248

Dear Fred Guido

This is an estimate of your Service Retirement. An estimate is a calculation of potential future benefits based on the following assumptions:

- Current pay rates reported by the employer
- Current retirement law
- Information provided by you

On page 3 of your retirement estimate, you are shown approximately what you would receive as a retirement allowance should you retire on 03/05/2009. When you apply for retirement, you will be required to select one of the retirement options shown. This is an irrevocable election.

The results are broken down by the following:

For You - This is the estimated monthly allowance you will receive for the Unmodified Allowance or one of the other retirement options.

For Your Beneficiary - This is the estimated monthly allowance your beneficiary will receive. Your beneficiary can be anyone you choose and does not need to be a spouse or relative. Based on the option selected at retirement, your beneficiary may receive a lump sum payment or a monthly allowance after your death. There is no amount shown for the Unmodified Allowance since this option does not provide for a beneficiary after your death.

For You, If Your Beneficiary Predeceases You - This is the monthly allowance you are entitled to receive should your beneficiary die before you.

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The information below was used to calculate your retirement estimate for 03/05/2009, at age 60 50

Employer Name	Years of Service	Formula/ Benefit Factor	% of Final Compensation	Final Compensation
City Of Cudahy	6 800	2% @ 55/ 2 288	15 558	\$ 11,838 00
City Of Cudahy	5 448	2% @ 55/ 2 288	12 465	\$ 11,838 00

IMPORTANT INFORMATION ABOUT THE CALCULATION

Final compensation is your highest average monthly pay rate for 12 or 36 months of consecutive employment based on your employer's contract. The final compensation dollar amount(s) shown have not been modified, most members that contributed to Social Security at any time during their CalPERS' employment should subtract \$133.33 from that employer's final compensation to obtain the dollar amount that was used to calculate the estimate. Certain exceptions may exist such as School members with service credit earned on or after January 1, 2001, or State Second Tier Members. Any change in the information will result in a different benefit calculation.

Any change in your years of service, benefit factor, or final compensation will result in a different benefit calculation. You should also keep in mind the following:

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Retirement Date 03/05/2009 Age at Retirement 60 50

Unmodified Allowance Highest allowance payable Benefit ends at your death The only benefit payable is the lump sum death benefit	For You	\$ 3,317
OPTION 1 Less than the Unmodified Allowance but provides that if there are any member contributions remaining at the time of your death the balance would be paid to your designated beneficiary(ies) in a lump sum The Option 1 allowance does not provide for a monthly allowance to a beneficiary after the member's death	For You	\$ 3,316
	For Your Beneficiary	Your total contributions of \$ 6,060.28 will be reduced by \$ 49 for each month that you receive an allowance Your contributions will be reduced to zero in approximately 10 27 years
	For You, if Your Beneficiary Predeceases You	\$ 3,316
OPTION 2 Lowest monthly allowance payable to you Upon your death, CalPERS pays out the same monthly allowance Returns to the Unmodified Allowance amount if your beneficiary predeceases you	For You	\$ 2,985
	For Your Beneficiary	\$ 2,985
	For You, if Your Beneficiary Predeceases You	\$ 3,317
OPTION 2W This is just like Option 2, except it does not return to the Unmodified Allowance amount if your beneficiary predeceases you In exchange, the allowance to you and your beneficiary is slightly higher	For You	\$ 3,045
	For Your Beneficiary	\$ 3,045
	For You, if Your Beneficiary Predeceases You	\$ 3,045
OPTION 3 Provides a higher allowance than under Option 2, but upon your death your beneficiary receives a lower allowance Returns to the Unmodified Allowance amount if your beneficiary predeceases you	For You	\$ 3,141
	For Your Beneficiary	\$ 1,570
	For You, if Your Beneficiary Predeceases You	\$ 3,317
OPTION 3W This is just like Option 3, except it does not return to the Unmodified Allowance amount if your beneficiary predeceases you In exchange, the allowance to you and your beneficiary is slightly higher	For You	\$ 3,174
	For Your Beneficiary	\$ 1,587
	For You, if Your Beneficiary Predeceases You	\$ 3,174

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Things to remember

- When planning your retirement you may want to consider how your retirement date affects your first cost of living increase. Cost of living increases are provided by law and are based on the consumer price index for all United States cities. For more information, visit the CalPERS website at www.calpers.ca.gov
- If you have contributed to Social Security and would like to know how it impacts your retirement, you can contact the Social Security Administration at 1-800-772-1213 or by visiting their web site at www.ssa.gov

CALPERS WEB SITE

You have taken an important step in planning your retirement by requesting an estimate of your retirement allowance. You may obtain additional information on all programs administered by CalPERS by logging on to our web site at www.calpers.ca.gov

You can use the CalPERS Retirement Calculator to help estimate your future retirement benefits. The Retirement Planning Calculator can be used with or without a Password. If a Password is used the information from your latest Annual Member Statement will be automatically added to the calculator. Using the Retirement Planning Calculator without a Password enables you to add various retirement dates, salary information, and future employment information to see how these changes would impact your future retirement benefits. To obtain this Password register for the online access at the CalPERS web site listed above.

CalPERS suggest all members attend one of our free Retirement Financial Planning Seminars or Retirement Planning Workshops. The CalPERS website makes it easy and convenient to review dates and locations, and register to attend one of these sessions.

SEE THE FOLLOWING PAGE FOR MORE INFORMATION

