

Attachment I (I)
Fred Guido's Prehearing Conference Statement
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DATE: October 9, 2012

FROM: John Michael Jensen
Law Offices of John Michael Jensen
11500 West Olympic Blvd Suite 550
Los Angeles CA 90064
Ph: (310) 312-1100
Fax: (310) 312-1109

**Re: In Re the Matter of Applicability of Government
Code Section 20638 to Member Fred Guido, Respondent and City of Cudahy,
Respondent v. California Public Employees' Retirement System
OAH Case No: 2012030387
Fred Guido's Prehearing Conference Statement**

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8 Attorneys for Respondent Fred Guido

9 BEFORE THE BOARD OF ADMINISTRATION
10 CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

11	In the Matter of the Applicability of	)	CALPERS CASE NO.: 9711
12	Government Code Section 20638 to Member	)	OAH CASE NO.: 2012-030387
13	Fred Guido,)	
14	FRED GUIDO and CITY OF CUDAHY,	)	FRED GUIDO'S PREHEARING
15	Respondents.	)	CONFERENCE STATEMENT
16		)	Prehearing Conf: September 12, 2012
17		)	Conf. Location: Los Angeles OAH
18		)	320 W. Fourth St., 6 th Fl.
19		)	Los Angeles, CA
20		)	Conf. Time: 1:30 pm
21		)	Presiding ALJ: Hon. Nancy Beezy Micon
22		)	OAH Hearing: November 13-16, 2012

22 Respondent Fred Guido respectfully submits this *Prehearing Conference Statement* for
23 use in the prehearing settlement conference.

24
25 **PREHEARING CONFERENCE STATEMENT**

26 Fred Guido submits this prehearing conference statement.

27 Guido reserves all rights to amend, add to, or otherwise revise this *Prehearing*
28 *Conference Statement* and otherwise proceed at hearing.

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A. Identification of Pleadings

- (1) Guido's *Appeal* dated April 9, 2012.
- (2) CalPERS' *Statement of Issues* dated February 2, 2012.
- (3) Guido's *Notice of Defense, Request for Hearing, Affirmative Defense, and New Matter*, dated June 12, 2011.
- (4) City of Cudahy's *Notice of Appearance* dated February 27, 2012.

B. Current Estimate of Time to Try Case

4 days.

C. Name of Each Witness the Party May Call At the Hearing

- (1) Fred Guido;
- (2) Michael Henry, former Director of Personnel, County of Los Angeles;
- (3) Vincent Yu, Mayor of Temple City;
- (4) Person most knowledgeable at the City of Cudahy;
- (5) Person most knowledgeable at CalPERS;
- (6) Person most knowledgeable at Los Angeles County Employees' Retirement Association (LACERA);
- (7) Person most knowledgeable at Los Angeles County regarding personnel; and
- (8) Person most knowledgeable at Los Angeles County Supervisor Don Knabe's office.

Guido reserves all rights to amend, add to, or otherwise revise this *Prehearing Conference Statement* and otherwise present additional witnesses or otherwise proceed at hearing, including to call rebuttal witnesses as necessary based on the testimony of witnesses to be called by CalPERS and/or by Respondent City of Cudahy.

D. The Name and Address of Each Expert Witness

Other than disclosed above, none.

E. Interpreter or Special Accommodation

No interpreter or special accommodation needed.

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1 **F. List of Documentary Evidence**

2 (1) October 6, 2003, letter from CalPERS' Retirement Estimate Unit, Member
3 Services Division, to Guido (Bates No. FGUIDO000002);

4 (2) Undated letter from CalPERS' Retirement Estimate Unit, Member Services
5 Division, to Guido and attached October 29, 2003, retirement estimate (Bates Nos.
6 FGUIDO000003-005);

7 (3) July 27, 2007, letter from CalPERS' Refund Processing Unit, Benefit Services
8 Division, to Guido (Bates Nos. FGUIDO000037-045);

9 (4) Undated letter from CalPERS' Retirement Estimate Unit, Member Services
10 Division, to Guido and attached October 2, 2007, retirement estimate (Bates Nos.
11 FGUIDO000008-012);

12 (5) October 20, 2008, letter from CalPERS' Retirement Estimate Unit, Member
13 Services Division, to Guido (Bates No. FGUIDO000001);

14 (6) October 20, 2008, December 23, 2009, letter from CalPERS' Retirement Estimate
15 Unit, Member Services Division, and attached October 20, 2008, retirement estimate (Bates Nos.
16 FGUIDO000001 and FGUIDO000021-0225

17 (7) April 3, 2009, Service Retirement Election Application executed by Guido (Bates
18 Nos. FGUIDO000026-030);

19 (8) April 15, 2009, letter from Clarence Malone, LACERA Retirement Benefits
20 Specialist, Claims Processing Division, to CalPERS' Member Services Division (Bates No.
21 FGUIDO000036);

22 (9) May 19, 2009, letter from LACERA to Guido denying reciprocity (Bates No.
23 FGUIDO000031);

24 (10) June 30, 2009, letter from Heather Hurff, Manager, CalPERS' RSVP Unit,
25 Member Services Division, to Guido denying reciprocity (Bates Nos. FGUIDO000032-034);

26 (11) June 16, 2009, letter from Guido to CalPERS (Bates No. PERS000000013)

27 (12) July 20, 2009, letter from Guido to CalPERS' Darryl Watson, Division Chief,
28 Member Services Division (Bates No. PERS000000011);

1 (13) August 10, 2009, letter from Nova Horton, CalPERS' Section Manager, Costing
2 and Elections, to Guido (Bates No. FGUIDO000047);

3 (14) CalPERS' Customer Touch Point (CTP) Report for Guido (Bates Nos.
4 PERS000000001-006);

5 Copies of these exhibits have been exchanged between the parties.

6 Some of the above exhibits may be admitted for limited purposes only.

7 In addition, Guido reserves all rights to amend, add to, or otherwise revise this
8 *Prehearing Conference Statement* and otherwise present additional documentary evidence at
9 hearing, including to use documents produced herein by either CalPERS and/or City of Cudahy
10 in rebuttal to testimony and/or documentary evidence presented by either CalPERS and/or City
11 of Cudahy.

12 **G. Description of Physical or Demonstrative Evidence**

13 Guido may offer demonstrative or physical evidence at hearing.

14 **H. Concise Statement of Legal Issues**

15 Guido reserves all rights to amend, add to, or otherwise revise this *Prehearing*
16 *Conference Statement* and otherwise revise the statement of legal issues or proceed at hearing.
17 Guido incorporates the arguments made in his *Notice of Defense* in this statement.

18 It is undisputed that CalPERS advised Guido, over the course of more than five (5) years,
19 including up through the date of his retirement, that he had established reciprocity between
20 CalPERS and LACERA. Relying on CalPERS' representation, Guido understood that he would
21 therefore be able to retire from CalPERS based on his higher final compensation amount with
22 LACERA.

23 Guido took various actions and other reliance, including detrimental reliance, on the
24 representation from CalPERS.

25 As one of those actions in detrimental reliance that reciprocity had already been
26 established such that he would receive a CalPERS pension based on his higher final
27 compensation at LACERA, Guido declined to take employment positions that would have
28 otherwise unquestionably established CalPERS reciprocity and allowed him the higher CalPERS

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1 pension. For example, and without limitation, based on CalPERS' specific representations to
2 Guido that reciprocity had been established such as to provide the higher pension, Guido
3 declined to take a new County of Los Angeles position which offered CalPERS membership and
4 benefits and therefore would have established or reestablished reciprocity, and thereafter Guido
5 filed for retirement from CalPERS, all in reliance upon CalPERS' representations and assurances
6 that he had already established reciprocity.

7 CalPERS' actions meet each of the elements to bring a breach of fiduciary claim against
8 CalPERS. CalPERS owes significant fiduciary duties to Guido. "[CalPERS] owes a fiduciary
9 duty to provide timely and *accurate* information to its members". (*City of Oakland v. Public*
10 *Employees Retirement System* (2002) 95 Cal.App.4th 29, 40, italics in original.)

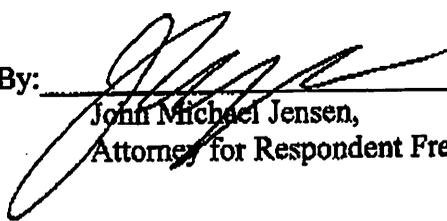
11 CalPERS' belatedly withdrew recognition of reciprocity between CalPERS and LACERA
12 concerning Guido's prior service, after repeated assurances that reciprocity applied and after
13 Guido relied upon such assurances to his detriment.

14 Equitable estoppel applies. It is well-established that the doctrine of estoppel may be
15 applied against a government body where justice and right require it. *City of Long Beach v.*
16 *Mansell* (1970) 3 Cal.3d 462, 493; *Piazza Properties, Ltd. v. Department of Motor Vehicles*
17 (1977) 71 Cal.App.3d 622. CalPERS is equitably estopped from denying that Guido established
18 reciprocity. As a result of being estopped to deny reciprocity, CalPERS owes Guido the higher
19 pension.

20 CalPERS otherwise violates its statutory, legal and other duties to Guido as described in
21 the *Notice of Defense*.

22 Respectfully submitted.

23
24
25 Dated: October 8, 2012

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

PROOF OF SERVICE BY MAIL

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I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 11500 West Olympic Blvd., Ste. 550, Los Angeles, CA 90064.

On October 9, 2012, I served the following document by the method indicated below:

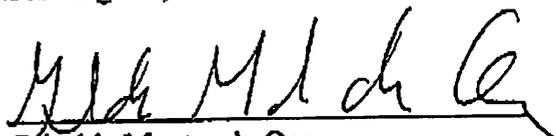
FRED GUIDO'S PREHEARING CONFERENCE STATEMENT

Said document was served by placing the document listed above in a sealed envelope and consigning it to a mail service for delivery to the address set forth below.

Harvey L. Leiderman
Jeffrey R. Rieger
Reed Smith LLP
101 Second Street, Suite 1800
San Francisco, CA 94105-3659
Counsel for Petitioner California Public Employees' Retirement System

Juanda Lowder Daniel
Olivares, Gallagher & Padilla
1100 South Flower Street, Suite 2100
Los Angeles, CA 90015
Counsel for Respondent City of Cudahy

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on October 9, 2012, at Los Angeles, California.


Griselda Montes de Oca