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

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

Case No. 9711  
OAH No. 2012030387

12 FRED GUIDO,

**CALPERS' HEARING BRIEF**

13 Respondent,

Hearing Date: November 13, 2012 through  
November 16, 2012 at 9:00 a.m.

14 CITY OF CUDAHY,

Place: Office of Administrative Hearings  
320 West Fourth St.,  
6th Floor, Suite 630  
Los Angeles, CA

15 Respondent.  
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18 **HEARING BRIEF**

19 When a member of CalPERS retires, his or her pension is determined under the provisions of  
20 the Public Employees' Retirement Law, Government Code sections 20000, *et seq.* ("PERL"). The  
21 computation of a CalPERS member's retirement allowance is based, in part, on that member's  
22 "compensation earnable."

23 Under Government Code sections 20638 and 20355 CalPERS may look to a member's  
24 average monthly salary earned while he or she was an active member of a county retirement system  
25 to establish that member's CalPERS "compensation earnable," so long as that CalPERS member  
26 becomes an active member of the county retirement system within six months after terminating  
27 service with his or her employer that participates in CalPERS. This benefit is commonly referred to  
28 as "reciprocity."

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1           Between 1970 and 1982, Guido served as an elected member of the Cudahy City Council.  
2 Guido received \$150 per month for his work. Guido has about 12 years of service credit in  
3 CalPERS based on the time he served on the Cudahy City Council.

4           From 1973 to 1977, while still serving on the City Council, Guido also became employed by  
5 the Los Angeles County Sheriff's Department. He remained a Los Angeles County employee until  
6 or about November 1977, at which time he separated from service. This time period did not qualify  
7 him for the advantage of section 20638, because section 20638 requires a member to transfer to  
8 active membership status in a county retirement system within six months after discontinuance of  
9 service with a CalPERS employer. Guido did not terminate service with the City of Cudahy before  
10 going to work for Los Angeles County in 1973 and he was already a member of the Cudahy City  
11 Council when he terminated with Los Angeles County in 1977.

12           Between 1982 and 1996, Guido was employed only in the private sector and was therefore  
13 not an active member of either CalPERS or LACERA.

14           Guido returned to employment with Los Angeles County in 1996, more than 14 years after  
15 his last service as a member of the Cudahy City Council. In that capacity he returned to active  
16 membership in LACERA. He remained a Los Angeles County employee until his termination of  
17 employment and retirement from the County on or about June 1, 2009. Because more than 14 years  
18 separated Guido's active memberships in CalPERS and LACERA, this second period of service did  
19 not qualify him for the advantage of section 20638.

20           On several occasions between 2003 and 2008, Guido requested that CalPERS staff generate  
21 retirement allowance estimates for him. In response, CalPERS' staff generated retirement allowance  
22 estimates, which were partially based on information that Guido provided to CalPERS staff. Those  
23 estimates and related communications were based on the mistaken assumption that Guido's  
24 CalPERS retirement allowance would be calculated using amounts that he earned while he was  
25 employed by Los Angeles County. Based on information provided by Guido, CalPERS staff used  
26 salaries as high as \$11,838 per month to generate Guido's retirement allowance estimates, which  
27 resulted in an unmodified retirement allowance estimate of over \$3,300 per month.

28           Guido is not entitled to the advantage of PERL section 20638 and therefore his CalPERS

1 retirement allowance must be based on the \$150 per month of "compensation earnable" that he  
2 earned when he was a member of the Cudahy City Council. This results in a monthly benefit of  
3 approximately \$70 per month.

4 Guido claims that he made a variety of decisions based on his belief that he was entitled to  
5 receive a CalPERS retirement allowance of over \$3,300. Thus, Guido claims that he is entitled, by  
6 equitable estoppel, to have his CalPERS retirement allowance based on his highest salary that he  
7 earned with Los Angeles County, resulting in a monthly benefit of over \$3,300 per month.

8 Guido has the burden of proof in this proceeding. CalPERS expects that, in his case in chief,  
9 Guido will attempt to meet his burden of proof on all elements of his claim for equitable estoppel.  
10 CalPERS contends that Guido will not be able to satisfy his burden of proof on those elements.

11 Whether or not Guido can meet his burden of proof on all elements of equitable estoppel is  
12 ultimately irrelevant, however, because equitable estoppel is not available to him as a matter of law.  
13 *See, e.g., Medina v. Board of Retirement* (2003) 112 Cal.App.4th 864, 870; *Fleice v. Chualar Union*  
14 *Elementary School Dist.* (1988) 206 Cal.App.3d 886, 893; *Barrett v. Stanislaus County Employees*  
15 *Retirement Assn.* (1987) 189 Cal.App.3d 1593, 1608.

16 Further, even if Guido could meet his burden of proof on all elements of equitable estoppel,  
17 and even if equitable estoppel were legally available to him, the Court would still have to be satisfied  
18 that applying equitable estoppel is equitable in this case, under all existing circumstances. Guido  
19 was paid only \$150 per month for his service on the Cudahy City Council. Guido and the City of  
20 Cudahy paid contributions to CalPERS to fund Guido's retirement benefits, based on a percentage of  
21 that monthly pay. To award Guido a retirement allowance over \$3,300 per month under these  
22 circumstances would not be equitable.

23 DATED: November 8, 2012.

24 REED SMITH LLP

25 By \_\_\_\_\_  
26

27 Jeffrey R. Rieger  
28 Attorneys for Petitioner California Public  
Employees Retirement System