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

11	In the Matter of the Applicability of	)	<b>CALPERS CASE NO.: 9711</b>
12	Government Code Section 20638 to Member	)	<b>OAH CASE NO.: 2012-030387</b>
13	Fred Guido,	)	
14	FRED GUIDO and CITY OF CUDAHY,	)	<b>FRED GUIDO'S HEARING BRIEF</b>
15	Respondents.	)	Hearing Dates: November 13-16, 2012
16		)	Hearing Location: Los Angeles OAH
17		)	320 W. Fourth St., 6 <sup>th</sup> Fl.
18		)	Los Angeles, CA
19		)	Hearing Time: 9:00 am
20		)	Presiding ALJ: _____
21		)	
22		)	

23 **OVERVIEW OF ISSUES**

24 Respondent Fred Guido spent approximately 25 years in public service, where he was a  
25 member of both the California Public Employees' Retirement System (CalPERS) and the Los  
26 Angeles County Employees' Retirement Association (LACERA) pension systems. He retired  
27 from both systems on June 1, 2009.

28 CalPERS and LACERA are "reciprocal" pension systems. Reciprocity is an important

1 benefit that significantly impacts the amount of retirement benefits. Reciprocity is a legal  
2 framework established by the Legislature to encourage public sector employees to remain in  
3 public service by permitting them to move between different public retirement systems but earn  
4 the same pension benefits they would accumulate if they remained in a single system for their  
5 entire career.

6 Reciprocity means that if an individual has accumulated service credit in both systems  
7 and meets other legal requirements, a member can retire simultaneously from both systems but  
8 use the highest compensation earned in *either* system to calculate the pension benefits paid by  
9 *both* systems. To establish reciprocity, an employee must *leave* one public pension system and  
10 then *join* the second system within six months.

11 CalPERS opposes Mr. Guido's claim (after the fact) by saying that he never met the  
12 formal conditions required to establish reciprocity. It argues that in the distant past, Mr. Guido's  
13 initial CalPERS and LACERA time overlapped (i.e., there was no gap between them) and his  
14 later LACERA service time occurred far beyond the six months after leaving CalPERS.

15 However, CalPERS specifically and unambiguously communicated to Mr. Guido that he  
16 had established reciprocity. CalPERS admits that it told Guido repeatedly, over the course of  
17 more than half a decade, that reciprocity was established. Specifically, CalPERS formally  
18 advised Mr. Guido beginning in the Fall of 2003 that he *had* established reciprocity between  
19 CalPERS and LACERA. CalPERS admits that it told Mr. Guido that he could expect to earn  
20 \$3,000-plus per month in CalPERS pension allowance based on the reciprocity. CalPERS  
21 repeated this advice in writing and orally on numerous other occasions over the next five and a  
22 half years, right up to the very eve of Mr. Guido's retirement in 2009.

23 Based on CalPERS' representations, Mr. Guido believed that he had established  
24 reciprocity. Mr. Guido accepted and relied on CalPERS' specific communication and advice. In  
25 reliance on CalPERS' representations about reciprocity, Guido turned down employment that  
26 would have established reciprocity and took other actions in "detrimental reliance" thereon. He  
27 submitted a retirement application based on CalPERS' representations.

28 CalPERS never informed Mr. Guido that its advice was incorrect, and that it had

1 determined he had *not* established reciprocity, until a full month *after* his retirement from both  
2 CalPERS and LACERA.

3 But after the fact, CalPERS argues that it should not be responsible for Guido's reliance  
4 on CalPERS' representations. CalPERS tries to immunize itself from paying the higher pension  
5 by essentially saying that it can give bad advice without consequence.

6 In other cases, CalPERS argues that a member is supposed to rely on CalPERS' advice.  
7 But in this case, CalPERS is saying that Mr. Guido is not allowed to rely on CalPERS' advice.  
8 CalPERS is arguing that it cannot be responsible for the consequences of its representations that  
9 Mr. Guido had established reciprocity, and made his career and retirement plans based on that  
10 advice.

11 But Guido did rely on CalPERS' representations such that CalPERS should be estopped  
12 to deny reciprocity.

13 In practical effect, CalPERS wishes to renege on its promises to Mr. Guido. After  
14 repeatedly assuring him he could expect a CalPERS pension of over \$3,000 per month, it instead  
15 pays him less than \$75 per month, less than 2.5% of what he counted on.

### 16 ESTOPPEL CLAIM

17 The issue to be addressed in this OAH proceeding is whether CalPERS should be held  
18 accountable for its repeated, long-term advice to Mr. Guido. CalPERS bears constitutional and  
19 statutory fiduciary duties to its membership (*California Constitution*, Art. XVI, §17; *Government*  
20 *Code*, §§20160, 20164) and has "a fiduciary duty to provide timely and *accurate* information to  
21 its members" concerning their pension rights (*City of Oakland v. Public Employees' Retirement*  
22 *System* (2002) 95 Cal.App.4<sup>th</sup> 29, 50, italics in original).

23 The evidence in the case will establish that Guido relied on CalPERS' representations.  
24 CalPERS informed Mr. Guido that he had established reciprocity. Mr. Guido reasonably relied  
25 on the advice. CalPERS should be estopped to deny reciprocity.

26 If CalPERS had timely informed Mr. Guido that he had *not* established reciprocity  
27 between CalPERS and LACERA, he had numerous opportunities to take action before retirement  
28 that *would* establish reciprocity and earn him the pension benefits he was counting on. For

1 example, Mr. Guido deliberately chose not to take a new job with CalPERS benefits in 2003  
2 which would unquestionably establish reciprocity if that did not already exist. In 2008, during  
3 the final month or so before his retirement, Mr. Guido declined the opportunity to go to work  
4 with Temple City which also would have given him CalPERS benefits and undisputedly  
5 establish reciprocity.

6 The evidence will also establish that CalPERS not only gave Mr. Guido what it now calls  
7 bad advice about his establishment of reciprocity, but that it miserably failed to follow its own  
8 long-standing internal policies and procedures to confirm reciprocity before advising a member it  
9 had been established.

10 And the evidence will establish that even after CalPERS came to the *unquestionable*  
11 *conclusion that Mr. Guido had not established reciprocity*, and knew that he was about to retire  
12 based on the previous advice, CalPERS still failed to correct the situation before Mr. Guido was  
13 irrevocably harmed, thereby waiving its right to challenge estoppel.

14 In short, Mr. Guido will establish that he has met all of the elements of equitable  
15 estoppel, and that CalPERS should be barred from punishing Mr. Guido for his good-faith trust  
16 and belief that CalPERS was providing him with the correct advice when he acted to his  
17 detriment on that trust and belief.

18 Finally, Mr. Guido will demonstrate that CalPERS' intimation that he is looking for some  
19 kind of undeserved "windfall" is completely baseless. CalPERS hints in its *Hearing Brief* (and  
20 will probably argue in the hearing itself) that awarding Mr. Guido the CalPERS pension he  
21 deserves will somehow unfairly punish the City of Cudahy by forcing it to fund pension benefits  
22 much larger than what it is currently funding.

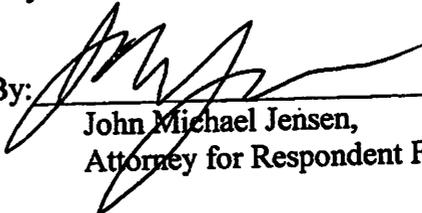
23 The truth is that if CalPERS had simply provided Mr. Guido with accurate advice, he  
24 could and would have taken the necessary steps to meet the requirements of reciprocity, if indeed  
25 that had not yet been established. Once established, reciprocity would require that Cudahy bear  
26 the portion of his CalPERS pension attributable to his City of Cudahy employment, an amount  
27 that would be to the penny the same amount he is asking for in this proceeding.

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Respectfully submitted.

Dated: November 9, 2012

By: 

John Michael Jensen,  
Attorney for Respondent Fred Guido

**PROOF OF SERVICE BY MAIL**

1  
2  
3 I am a resident of the State of California, over the age of eighteen years, and not a party  
4 to the within action. My business address is 11500 West Olympic Blvd., Ste. 550, Los Angeles,  
5 CA 90064.

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

7  
8 **FRED GUIDO'S HEARING BRIEF**

9  
10 Said document was served by placing the document listed above in a sealed envelope and  
11 consigning it to a mail service for delivery to the address set forth below.

12  
13 Harvey L. Leiderman  
14 Jeffrey R. Rieger  
15 Reed Smith LLP  
16 101 Second Street, Suite 1800  
17 San Francisco, CA 94105-3659  
18 Counsel for Petitioner California Public Employees' Retirement System

19 Juanda Lowder Daniel  
20 Olivares, Gallagher & Padilla  
21 1100 South Flower Street, Suite 2100  
22 Los Angeles, CA 90015  
23 Counsel for Respondent City of Cudahy

24  
25 I declare under penalty of perjury under the laws of the State of California that the above  
26 is true and correct. Executed on November 9, 2012, at Los Angeles, California.

27  
28   
Griselda Montes de Oca