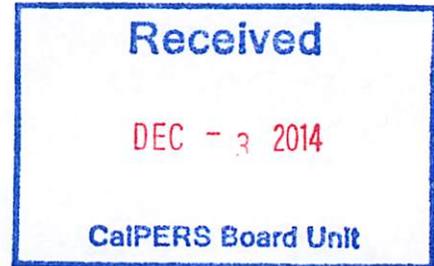


**ATTACHMENT C**  
**RESPONDENT'S ARGUMENT**

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9 JOHN W. HEEREN



10 **BEFORE THE**  
11 **BOARD OF ADMINISTRATION**  
12 **CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT BOARD**  
13 **STATE OF CALIFORNIA**

14 In the Matter of the Calculation of the Final  
15 Compensation of:

16 JOHN W. HEEREN

17 Respondent,

18 vs.

19 CALIFORNIA STATE UNIVERSITY,  
20 SAN BERNARDINO,

21 Agency.

CASE NO.: 9591

OAH No. 2013030304

**RESPONDENT JOHN W. HEEREN'S  
ARGUMENT**

HEARING DATE: 12/17/2014

22 **TO: HONORABLE BOARD OF ADMINISTRATION OF THE**  
23 **CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM (CalPERS):**

24 **PLEASE TAKE NOTICE** that Respondent JOHN W. HEEREN hereby submits  
25 argument in support of the Proposed Decision rendered by Susan J. Boyle, Administrative  
26 Law Judge of Office of Administrative Hearings (OAH), dated September 17, 2014.  
27  
28



1                   **E.     OAH TARGETED THE APPROPRIATE ISSUES.**

2                   It is undisputed that OAH targeted the appropriate issues subject to hearing and proof:

- 3                   1.     Did CalPERS correctly determine Respondent's service retirement  
4                   allowance?  
5                   2.     Did CSU correctly report Respondent's final year of service  
6                   compensation to CalPERS?  
7                   3.     If the answer to No. 2 is "No," what remedies are available in this  
8                   proceeding?

9                   **F.     OAH REOPENED THE RECORD TO ALLOT CSU TIME TO  
10                  PROVIDE ADDITIONAL EVIDENCE.**

11                  On January 10, 2014, ALJ Susan J. Boyle ordered CSU/CalPERS to show cause as to  
12                  why OAH should not order CSU to amend and correct its records to reflect that Respondent  
13                  worked only one job during academic year 2006-2007 and to provide answers to questions  
14                  relative Respondent's predecessor and successor's job duties and what duties Respondent  
15                  was performing during this time frame. ALJ had further questions about the interpretation of  
16                  the phrase "term of service." The reopened hearing took place on August 19, 2014.

17                  **G.     FINDINGS OF FACT SUPPORT THE DECISION.**

18                  1.     CalPERS manages pension benefits for public employees and  
19                  calculates a public employee's service retirement allowance based upon several factors:  
20                  number of years of credited service, age at date of retirement, and "final compensation."  
21                  (Finding Nos. 7 and 8)

22                  2.     Respondent was employed with CSU for 35 years and retired on July  
23                  1, 2007. Except for his last 12 years of CSU employment, he was a CSU faculty member  
24                  teaching classes in the Sociology Department. He took a sabbatical leave for one quarter –  
25                  April 1<sup>st</sup> to June 30, 2006. He received his salary during the sabbatical period. (Finding No.  
26                  9)

27                  3.     In late 2005, Respondent was asked and served as the Associate Dean  
28                  of the College of Social and Behavioral Sciences at CSUSB in the fall of 2005. (Finding No.  
29                  11)

1           4.       When he returned from sabbatical, Respondent served as exclusively  
2 on a full-time basis as the Associate Dean of the College of Social and Behavioral Sciences  
3 from June 30, 2006 to his retirement on June 30, 2007. (Finding Nos. 13 and 14)

4           5.       Respondent's pay scale as Associate Dean was \$107,000 and this was  
5 promised to him. From July 1, 2006, Respondent's only job responsibilities were as an  
6 Associate Dean (Finding Nos. 15 and 16)

7           6.       On June 1, 2007, Respondent completed a Service Retirement Election  
8 Application to retire on July 1, 2007. (Finding No. 18)

9           7.       By letter, dated January 26, 2008, CalPERS advised Respondent that  
10 his retirement benefit was based upon an average monthly compensation of \$8,524 (\$102,288  
11 for 12 months). This amount represented a monthly pay rate of \$8,131 for July through  
12 December 2006 and a pay rate of \$8,917 for January through June 2007. (Finding No. 19)

13           8.       On April 21, 2008, Heeren appealed CalPERS' calculation claiming  
14 that his last twelve months of employment was \$108,722.50. (Finding No. 20)

15           9.       Along with the appeal, Heeren attached a letter from John A. Conley,  
16 Retired Dean at CSUSB, which noted that "[t]he salary agreed upon between Dr. Heeren and  
17 Dean Conley was \$107,000 for that 12-month period." (Finding No. 20)

18           10.      Through letters sent, CalPERS recalculated his service retirement  
19 increasing it to \$8,589.50 ((\$103,074 for 12 months). Later, CalPERS returned to its former  
20 calculation and refused to yield. (Finding Nos. 23 and 24)

21           11.      On June 1, 2009, Heeren appealed the decision to deny his request for  
22 an increase calculation of his retirement benefits. (Finding No. 25)

23           12.      Testimony from Samuel Camacho, Jr. and Sheila Arndt, Retirement  
24 Program Specialists of CalPERS, relied upon payroll records submitted by CSU showing that  
25 Respondent was working full-time and a part-time position acting as Associate Dean.  
26 (Finding No. 28)

27           13.      Testimony of Respondent John W. Heeren was credible in explaining  
28 that he assumed the duties of Associate Dean on July 1, 2006 and that he spoke to Ms.  
Callahan of CSU H.R.-Benefits Dept. who informed him that his pension would be based  
upon his Associate Dean's compensation. (Finding No. 29)

1                   14.     Testimony of Rebecca Christopher of CSU Employment/ Retirement  
2 received during the reopened hearing in August 2014 establishes that Respondent was a full-  
3 time Associate Dean as of July 1, 2006. Christopher spoke with Dr. Paul Vicknair, former  
4 Associate Provost, who confirmed that CSU created the position as Associate Dean to  
5 compensate Respondent. (Finding No. 30)

6                   15.     Findings confirm that Respondent was an Associate Dean from July 1,  
7 2006 through his retirement on July 1, 2007; yet, CalPERS had calculated the Associate  
8 Dean' salary from January through June 2007.

9                   **H.     LEGAL CONCLUSIONS SUPPORT DECISION.**

10                   1.     The California Constitution imposes a duty on CalPERS to "ensure the  
11 rights of members and retirees to their full, earned benefits." *City of Pleasanton v. Board of*  
12 *Administration* (2012) 211 C.A.4<sup>th</sup> 522, 544. Pension provisions should be broadly construed  
13 in favor of those who were intended to be benefited thereby, but they cannot be construed so  
14 as to confer benefits on persons not entitled thereto." (*Stamper v. City of Los Angeles* (1947)  
15 80 C.A2d 242, 244. (Conclusion Nos. 1-3)

16                   2.     "The uncontroverted fact is that CSU created the fictionally,  
17 concurrent, faculty positions so that Respondent would be correctly paid under the  
18 established salary schedule for the job he was performing. Had CSU correctly reported  
19 Respondent's position and salary, Respondent would be entitled to an increase in retirement  
20 benefits. Cal PERS has a fiduciary duty to look beyond the well-intentioned, but erroneous,  
21 reporting by CSU and correct this situation." (Conclusion No. 160)

22                   3.     "CalPERS is required to ensure that the reported pay rate is corrected.  
23 CalPERS is directed to instruct CSU to correct the pay rate it reported to reflect that  
24 Respondent was appointed as a full-time Associated Dean and that he earned a minimum of  
25 \$107,000.00 per year." (Conclusion No. 18)

26                   4.     Because of CSU's delays in providing evidence, "CalPERS must be  
27 estopped from refusing to correct Respondent's records." (Conclusion No. 20)

28                   5.     "Had CalPERS not delayed this matter for an unreasonable time, the  
necessary corrections could have been made by CSU. Having delayed this matter beyond the  
time in which corrections could have been made, CalPERS cannot now assert that

1 Respondent's remedy lies with another entity. CalPERS must instruct CSU to correct the  
2 pay rate it reported to CalPERS." (Conclusion No. 21)

3 **I. THE FINDINGS OF FACT AND THE CONCLUSIONS OF LAW**  
4 **WARRANT THE ORDER THAT ISSUED.**

5 1. "CalPERS shall recalculate John W. Heeren's compensation earnable  
6 based upon his employment as an Associate Dean earning a yearly salary of no less than  
7 \$107,000.00, for the period July 1, 2006 to June 30, 2007." (Order No. 1)

8 2. "CalPERS will instruct California State University, San Bernardino, to  
9 correct to the extent possible, the classification and pay rate concerning John W. Heeren to  
10 reflect his pay rate and classification of Associate Dean for the period July 1, 2006 to June  
11 30, 2007." (Order No. 2)

12 3. "If it is determined that John W. Heeren did not fully pay employee  
13 contributions that should have been paid to CalPERS based upon his employment as an  
14 Associate Dean for the period July 1 to December 2006, he must pay the unpaid amount to  
15 CaPERS. The amount determined to be owed by John W. Heeren, if any, may be used by  
16 CalPERS as a set-off for amounts owed to John W. Heeren for the underpayment of  
17 retirement benefits." (Order No. 3)

18 **II. REQUEST TO DESIGNATE DECISION AS PRECEDENT**

19 Respondent John W. Heeren also requests that the Board designate this decision as a  
20 case precedent.

21 **III. REQUEST FOR FULL BOARD HEARING**

22 Respondent John W. Heeren also requests a full Board hearing on the issues  
23 presented in this Argument.

24 **IV. CONCLUSION**

25 No error was committed by ALJ Susan J. Boyle that would warrant vacating or  
26 reversing the decision of September 17, 2014. The Board should order CalPERS to comply  
27 with the order of ALJ Boyle.

28 DATED: December 3, 2014

  
\_\_\_\_\_  
DALE M. FIOLA  
Attorney for Respondent  
JOHN W. HEEREN

**PROOF OF SERVICE**

I am over the age of 18 years and am not a party to this cause. I am employed in the County of Orange. My business address is 200 North Harbor Boulevard, Suite 217, Anaheim, California 92805 and electronic notification address is fiolaw1@aol.com.

On December 3, 2014, I served the following document(s) in this action,

- **RESPONDENT JOHN W. HEEREN'S ARGUMENT**

by sending a true copy thereof by **ELECTRONIC MAIL** and **U.S. MAIL DELIVERY** and by **FAX** addressed to the interested persons served as follows:

**U.S. MAIL**

**EMAIL**

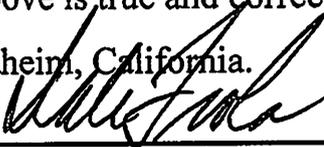
**FAX**

CHEREE SWEDENSKY Assistant to the Board CalPERS Executive Office P.O. Box 942701 Sacramento, CA 94229-2701	Christy_bodily@calpers.ca.gov	(916) 795-3972
CALIFORNIA STATE UNIVERSITY, SAN BERNARDINO 5500 University Parkway San Bernardino, CA 92407-2397		

The transmission of said document(s) to each party served was reported as complete and without error within a reasonable time after said transmission. I am a member of the bar of the Court in which this action is pending.

I declare under penalty of perjury under the laws of the State of California and/or the United States of America that the above is true and correct.

Executed on December 3, 2014, at Anaheim, California.

  
\_\_\_\_\_  
DALE M. FIOLA