ATTACHMENT A

THE PROPOSED DECISION

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BEFORE THE
BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
STATE OF CALIFORNIA

In the Matter of the Removal of Erroneously Credited Service Credit of: GUS FRIAS, Respondent.	Case No. 2013-00981 OAH No. 2014040763

PROPOSED DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, on September 10, 2014, in Los Angeles. Complainant California Public Employees' Retirement System was represented by Christopher C. Phillips, Staff Attorney. Respondent Gus Frias was present and represented himself.

California Public Employees' Retirement System presented Exhibits 1 – 22 and the testimony of Dana Dimaggio, Retirement Program Specialist II, Service Credit Section, Customer Account Services Division. Respondent testified and presented Exhibits A - M.

On October 6, 2014, the Administrative Law Judge issued a Post-Hearing Order, directing complainant to file a document or summary explaining the amount of respondent's service credit at issue in this matter. On October 17, 2014, complainant filed a letter response and the Declaration of Dana Dimaggio, who reiterated and clarified her testimony from the hearing. The Post-Hearing Order, CalPERS' response, and the declaration were marked as Exhibits 23 – 25, respectively, and Exhibit 25 was admitted into evidence.

Documentary and oral evidence having been received and argument heard, the Administrative Law Judge submitted this matter for decision on October 17, 2014, and finds as follows:

FACTUAL FINDINGS

1. On November 19, 2013, the Statement of Issues, Case No. 2013-0981, was made and filed by Karen DeFrank in her official capacity as Chief of the

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Customer Account Services Division, Board of Administration, California Public Employees' Retirement System, State of California (CalPERS).

2. On September 14, 1987, respondent was hired and appointed as a permanent and full-time coordinator of the school services fund of Orange County Schools, a public agency. By virtue of his employment with Orange County Schools, respondent became a member of CalPERS for the first time. Prior to his employment with Orange County Schools, respondent had worked for the Los Angeles Police Department where he had not been a member of CalPERS. Over three years later, on December 28, 1990, respondent terminated his employment with Orange County Schools and elected to terminate his membership in CalPERS and to receive a refund of his accumulated contributions to his CalPERS account. Effective on January 1, 1991, respondent's membership in CalPERS was terminated. He was refunded the amount of his contributions to CalPERS and his service credit of 3.565 years was removed.

3. (A) From January 1991 through January 1996, it was not established that respondent was a member of CalPERS. Respondent asserted that he started working for the Los Angeles County Office of Education (LACOE), a public agency, in 1991 as a subject expert and then as a coordinator of school safety. His claim, however, was not established by the evidence.

(B) Respondent did not, in fact, work for LACOE during the 1993-1994 school year. In the fall of 1994, respondent entered a year-long program in administration and public policy at Harvard University. He attained a Master of Arts. The tuition for this course of study was paid for, in part, by Harvard University and by respondent. LACOE did not pay for the master program as a condition or benefit of employment.

(C) From April 1, 1995 through January 15, 1996, respondent was employed by LACOE as a safe schools coordinator in a limited-term position. He worked 160 hours per month. Respondent was not a CalPERS member during this time period that he worked as a safe schools coordinator. In fact, 14 year later, on June 24, 2010, respondent submitted a Request for Service Credit Cost Information—Service Prior to Membership to CalPERS, seeking cost information so that he could purchase service credit for the time period that he worked as a safe schools coordinator.

4. Effective on January 16, 1996, respondent was hired by LACOE as a safe schools coordinator in a permanent, full-time, and non-certificated position. By virtue of this employment with LACOE, respondent once again became a member of CalPERS. On or about October 2, 1998, LACOE filed a Member Action Request to inform CalPERS of respondent's employment and membership. On June 28, 1999, LACOE filed an amended Member Action Request to correct respondent's hire date and CalPERS membership date.

5. From the 1995-1996 fiscal year through the 2009-2010 fiscal year, respondent was continuously employed by LACOE. Based on this employment, he accrued or earned 14.160 years of service or service credit as a CalPERS member.

6. (A) During its 2002-2003 fiscal year, LACOE conducted an internal audit of its books and records to review and confirm payroll information and CalPERS membership for its employees, many of whom had missing information about their employment with the agency. In 2003, LACOE reported its findings of payroll information to CalPERS

(B) On November 7, 2003, CalPERS' Member Services Division notified respondent that it had received verification of his employment with LACOE. CalPERS further advised respondent that additional service credit and employee retirement contributions, which CalPERS believed had not been previously reported by LACOE, had been posted to his CalPERS account. Relying on the payroll information provided by LACOE from its audit, CalPERS added service credit of 0.541 year to respondent's account for the 1995-1996 fiscal year and service credit of 1.0 year to each of the three fiscal years from 1996-1997 through 1998-1999. For the four fiscal years, CalPERS posted a total of 3.541 years of service credit and a total of $11,356.14 in employee retirement contributions to respondent's CalPERS account based on the reporting by LACOE. CalPERS notified responded that these additional service credits and contributions would be reflected in his annual member statement as of June 30, 2003.

(C) As set forth in his annual member statement as of June 30, 2002, respondent received 1.0 year of service credit and was credited for $5,786.72 in retirement contributions for the 2001-2002 fiscal year. As set forth in his annual member statement as of June 30, 2003, respondent also received 4.541 years of service credit and was credited with $18,171.43 in employee retirement contributions for the 2002-2003 fiscal year.[1]

(D) The November 2003 posting by CalPERS of 3.541 years of additional service credit and $11,356.14 in additional employee retirement contributions to respondent's account for the four fiscal years from 1995 through 1999 was erroneous. CalPERS had, in fact, previously received the information from LACOE and had posted one year of service credit and employee retirement contributions for each of the fiscal years to respondent's account. The November 2003 posting thus constituted a double posting or crediting to respondent's account.

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[1] As set forth in his annual statement as of June 30, 2004, respondent received his regular 1.0 year of service credit and was credited with $7,8061.01 of his actual employee retirement contributions that he had made during the 2003-2004 fiscal year.

7. On June 30, 2010, respondent separated from employment with LACOE. Four months later, on or about October 25, 2010, respondent filed a Request for Service Credit Cost Information—Service Prior to Membership (Request for Service Cost Information) with CalPERS. By filing this form, respondent requested information regarding the cost to purchase service credit for the time that he worked or served as a safe school coordinator for LACOE from April 1, 1995, through January 15, 1996, when he was not a CalPERS member. A LACOE senior human resources specialist verified that this service was eligible for purchase. However, due to a backlog of requests and a conversion in computer systems, CalPERS did not process respondent's Request for Service Credit Cost Information for almost three years, as described in Findings 11 and 12 below.

8. Meanwhile, on an undetermined date, respondent filed a request for a service retirement estimate with CalPERS. He was planning to retire on May 17, 2011. On April 14, 2011, CalPERS sent respondent a service retirement estimate in which CalPERS indicated that its information showed respondent had 17.701 years of service with LACOE, which was erroneous for reasons set forth in Finding 6 above. Based on a benefit factor of 2.5 percent, CalPERS estimated respondent would receive an unmodified monthly service retirement equal to 44.253 percent of his final compensation. CalPERS further informed respondent of the following:

> While every effort has been made to ensure the accuracy of this retirement estimate, it should be understood that it does not have the force and effect of law, rule, or regulations governing the payment of benefits. Should any difference or error occur, the law will take precedence. Any change in your years of service, benefit factor, option factors, or final compensation will result in a different benefit calculation.

CalPERS wrote that the service retirement estimate was a calculation of potential future benefits based on the assumptions about his current pay rate as reported by his employer, current retirement law, and information provided by him. In the estimate, CalPERS informed respondent that, when he applied for retirement, he would be required to select one of several retirement options.

9. On or about March 29, 2011, respondent submitted a Service Retirement Election Application to CalPERS, stating he was electing to retire on the basis of service on May 17, 2011. Respondent selected a retirement payment option and designated his beneficiaries. On April 1, 2011, CalPERS acknowledged receipt of respondent's application to elect to retire on the basis of service. On May 17, 2011, respondent did, in fact, retire on the basis of service. On the same date, CalPERS informed respondent that his Service Election Application and retirement payment option had been processed and that his monthly retirement benefit would be $3,741.35. On or about July 1, 2011, he began receiving his regular retirement warrants from CalPERS. He was 55 years old.

10. In calculating respondent's retirement allowance, CalPERS used the erroneous information of respondent's years of service of 17.701 years. The correct number of his years of service or service credit was, in fact, 14.160 years. CalPERS had calculated respondent's retirement allowance by erroneously including the double posting not only of service credit of 3.541 years but also the $11,356.14 in additional retirement contributions for the fiscal years 1995-1996, 1996-1997, 1997-1998, and 1998-1999. CalPERS' error resulted in increasing respondent's retirement allowance to an amount that was higher than that to which he was entitled by statute. Respondent received this higher retirement allowance for the next two or three years.

11. On August 25, 2011, CalPERS notified respondent that it was temporarily unable to process his Request for Service Credit Cost Information that he filed six months earlier due to the implementation of a new integrated computer system. CalPERS indicated that members' service credit cost requests would be processed in the order received after the new computer system became operational.

12. (A) In or about August 2012, staff in the CalPERS' Customer Account Services Division and the Membership Analysis and Design Unit began processing respondent's Request for Service Credit Cost Information and reviewed its payroll database, respondent's CalPERS account, and the employee information previously provided by his employers, Orange County Schools and LACOE. This review by CalPERS was more extensive than what was conducted for the preparation of his service retirement estimate. In the course of reviewing the records for the Request for Service Credit Cost Information, CalPERS staff discovered that, in November 2003, CalPERS had mistakenly or erroneously credited respondent's account with double the amount of service credit and employee retirement contributions for the fiscal years 1995 through 1999. When it received information in 2003 from LACOE following that agency's audit, CalPERS did not realize that it had already posted the service credit and employee retirement contributions to respondent's account for those fiscal years and credited his account again.

(B) The Customer Account Services Division staff asked the Benefits Services Division to calculate the correct amount of respondent's retirement allowance after deducting 3.541 years of service credit and concomitant employee retirement contributions from his account. In December 2012, said staff received the information from the Benefits Services Division and referred the matter to the management of the Customer Account Services Division. Beginning in January 2013, the management, recognizing that the correction of CalPERS' error would result in a decrease in respondent's retirement allowance as well as the collection of any overpayments, sought to find a solution that would offset the decrease in respondent's retirement allowance and mitigate the financial impact upon him.

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(C) In or about March 2013, Customer Account Services Division management decided that, when respondent was informed of the error in his account and the change in his retirement allowance, respondent should be offered the opportunity to purchase additional service credit even though he had already retired.

13. (A) In a letter dated July 2, 2013, CalPERS sent information to respondent on his Request for Service Cost Information. CalPERS advised respondent that it would cost him $5,579.18 to purchase 0.847 years of service credit for the time that he worked for LACOE from April 1, 1995, through January 15, 1996, when he was not a CalPERS member. CalPERS estimated that the purchase of this service credit would increase his retirement allowance by $185.90 per month. Normally, a member can purchase service credit only prior to retirement. However, since he had filed his request to purchase service credit prior to retiring, CalPERS provided respondent with a one-time opportunity to purchase the service credit. CalPERS informed respondent, in part, that a member can earn a maximum of 1.0 year of service credit per fiscal year.

(B) In the letter of July 2, 2013, CalPERS told respondent that, if he wished to purchase the additional service credit of 0.847 years, he had to complete, sign, and return an enclosed Election to Purchase Service Credit within 60 days. Respondent was given the option to purchase the 0.847 year of service credit either by paying a lump sum payment or making installment payments. However, respondent did not elect to purchase the service credit due to receiving disheartening and upsetting news from CalPERS, as described below.

14. (A) On July 1, 2013, respondent received a telephone call from CalPERS informing him that it had discovered an error in his account which would result in a $700 reduction in his monthly retirement benefit.

(B) On July 11, 2013, the Service Credit and Elections Manager of the Customer Account Services Division wrote to respondent to inform him that, in reviewing his file and payroll records for processing his Request for Service Credit Cost Information, CalPERS discovered that it had overstated the amount of service credit that he had earned in the 2002-2003 fiscal year.

(C) In this July 11, 2013 letter, the Service Credit and Elections Manager advised respondent that CalPERS was required to correct the error and was removing the 3.541 years of service credit and $11,356.14 that were mistakenly credited to his account. In addition, said manager indicated CalPERS was adding service credit of 0.381 years and employee contributions of $813.12 to his account for the period of January 16, 1996, through May 14, 1996, for the 1995-1996 fiscal year in accordance with his employer's payroll reports. CalPERS determined that this additional payroll information was missing from respondent's account. In other words, CalPERS determined that respondent's account was erroneously credited with a net 3.16 years of service credit (3.541 years minus 0.381 years) and a net $10,543.02 in employee contributions ($11,356.14 minus $813.12).

(D) Said manager further advised respondent that CalPERS was offering him two one-time opportunities to purchase service credit as described in Finding 13 above and Finding 15 below. Respondent was informed that, if he did not elect to purchase the additional service credit, then his monthly retirement benefit would be reduced by $716.37 and the overpayment of retirement benefits due to CalPERS' error was approximately $13,957.66. Respondent was advised of his appeal rights.

15. In a letter dated July 2, 2013, CalPERS offered respondent a second one-time opportunity to purchase 3.565 years of service credit as a redeposit of the employee retirement contributions that he previously withdrawn in or about January 1991 when he quit working for Orange County Schools and terminated his CalPERS membership. The cost of purchasing the 3.565 years of service credit was $43,961.79. Respondent was offered the option of paying for the cost of this additional service credit by making a lump sum payment, installment payments, or authorizing deductions from his retirement allowance. If he elected to purchase the redeposit of this service credit, CalPERS was planning to offset the overpayment in retirement benefits paid to respondent over the two prior years by deducting the overpayment from any retroactive retirement benefits payments owed to respondent by said purchase of service credit. Respondent did not file an election to purchase the additional 3.565 years of service credit.

16. (A) On August 2, 2013, respondent sent a letter to the Customer Account Services Division asking for answers to nine questions that he had about the reduction of his retirement allowance.

(B) On August 9, 2013, respondent filed an appeal of CalPERS' decision to remove his service credit and seek payment of the overpayment in his retirement allowance, and the attendant loss of monthly retirement benefits. In his appeal, respondent complained, in part, about the delay in CalPERS' discovery of the "alleged error" in his service credit, emphasized that he had been receiving retirement allowance warrants for two years, and characterized the acceptance of his service retirement application as a contract that could not be changed without his consent.

17. (A) On August 9, 2013, the manager of CalPERS' Service Credit Costing and Elections, Customer Account Services Division, sent a reply answering respondent's questions and providing him with a summary of his service credit. In her reply, the manager told respondent, in part, that CalPERS sincerely regretted that the error occurred and that correction of the error has economic consequences for him but that the error had to be corrected in accordance with the Public Employees' Retirement Law. The manager acknowledged CalPERS' receipt of his appeal.

(B) In the attached summary of his service credit, CalPERS informed respondent that, under the Public Employees' Retirement Law, service was credited on a fiscal year basis and ten months of full-time service in a fiscal year equaled 1.0 year of service credit. Respondent was advised that a member could earn a maximum of 1.0 year of service credit in a fiscal year. CalPERS told respondent that he had 14.160 years of service credit for having worked from the 1995-1996 fiscal year through the 2009-2010 fiscal year. CalPERS added that respondent's total service credit was based on the regular monthly earnings reported to CalPERS by his employer.

(C) In the August 9, 2013 summary of respondent's service credit, CalPERS indicated that, for the 1995-1996 fiscal year, respondent had worked 1.598 months and earned service credit of 0.160 year.

18. (A) On June 20, 2014, respondent sent a letter to CalPERS counsel requesting answers to 14 questions that he had about CalPERS' error in calculating his retirement benefit. On July 8, 2014, CalPERS counsel sent a reply to respondent.

(B) As set forth in counsel's reply to respondent and the testimony and Declaration of Dana Dimaggio, retirement program specialist, the error which CalPERS seeks to correct is the over-crediting to respondent's account of a net amount of 3.16 years of service credit and $10,543.02 in employee contributions.

(C) For his service retirement allowance or benefit beginning in July 2014, CalPERS reduced respondent's warrant by approximately $800 reflecting the correction and removal of 3.541 years of service credit and $11,356.14 in employee contributions that were not earned or provided by respondent or his employer. On July 3, 2014, respondent complained about the reduction in his warrant while his appeal was pending. On July 8, 2014, CalPERS counsel sent a letter of explanation to respondent.

(D) For his service retirement allowance or benefit beginning in August 2014, CalPERS reduced respondent's warrant by approximately $300 to collect the past overpayments in retirement made to him on account of CalPERS error. On September 3, 2014, respondent complained about this reduction in his warrant.

19. In a letter dated September 3, 2014, and at the hearing in this matter, respondent stated he would now like to purchase the redeposit of withdrawn contributions and the 3.565 years of service credit that was offered in the July 2, 2013 notification by CalPERS. Respondent did not accept the opportunity to purchase this additional service credit at that time because he was distressed by and did not understand CalPERS' decision to remove the service credit from his account and to reduce his monthly service allowance. He has yet to file an Election to Purchase Service Credit form.

20. Respondent is 58 years old. He lives with his parents and helps to provide support to them as well as to his nieces and nephews. The removal of the service credit and reduction of his retirement benefit has caused financial hardship for him and his family. In this appeal, respondent contends that he earned the 3.5 years of service credit that CalPERS is seeking to remove from his account although he did not present any evidence to corroborate his claim. He is engaged in discussions with his former employer LACOE to correct his payroll information.

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Based on the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

1. Grounds do not exist to grant respondent's appeal pursuant to Government Code sections 20160, subdivision (a), in that the preponderance of the evidence established that CalPERS has authority to correct its error in calculating respondent's retirement allowance and may remove 3.16 years of service credit and $10,543.01 in employee contributions that were mistakenly added to respondent's account, based on Findings 1 – 20 above.[2]

2. Under sections 21350 et seq., some components of respondent's retirement allowance are the amount of his employee contributions, his final salary, and a multiplier comprised of a "retirement fraction" depending on the retiree's age at the time of retirement and the number of years of prior service. The present case refers to the number of years of prior service expressed above as years of service credit as well as his employee contributions. CalPERS has determined that it miscalculated respondent's retirement allowance due to having erroneously credited his account with excess service credit and employee contributions and must correct its error. Respondent has appealed CalPERS' determination.

3. Section 20160, subdivision (a), provides, in pertinent part, that the Board of Administration of CalPERS (Board) may, in its discretion and upon any terms it deems just, correct the errors or omissions of any active or retired member provided that all of the following facts exist:

(1) The request, claim, or demand to correct the error or omission is made by the party seeking correction within a reasonable time after discovery of the right to make the correction, which in no case shall exceed six months after discover of this right;

[2] Statutory references are to the Government Code, unless indicated otherwise.

(2) The error or omission was the result of mistake, inadvertence, surprise, or excusable neglect, as each of those terms is used in Code of Civil Procedure section 473.

(3) The correction will not provide the party seeking correction with a status, right, or obligation not otherwise available under this part.

Failure by a member to make the inquiry that would be made by a reasonable person in like or similar circumstances does not constitute an "error or omission" correctable under section 20160.

Subdivision (b), provides, in pertinent part, that, subject to subdivisions (c) and (d), the Board shall correct all actions taken as a result of error or omissions of the system.

Subdivision (c) states that the duty and power of the Board to correct mistakes, as provided in this section, shall terminate upon the expiration of obligations of this system to the party seeking correction of the error or omission, as those obligations are defined by section 20164.[3]

Subdivision (d) states that the party seeking correction of an error or omission pursuant to this section has the burden of presenting documentation or other evidence to the Board establishing the right to correction pursuant to subdivisions (a) and (b).

Subdivision (e) provides, in pertinent part, that correction of errors or omissions shall be such that the status, rights, and obligations of all parties are adjusted to be the same that they would have been if the act that would have been taken, but for the error or omission, was taken at the proper time.

4. Section 20163, subdivision (a), provides, in pertinent part, that adjustments to correct overpayment of a retirement allowance may also be made by adjusting the allowance so that the retired person will receive the actuarial equivalent of the allowance to which the member is entitled.

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[3] Section 20146, subdivision (a), provides, in pertinent part, that the obligations of the system to its members continue throughout their respective memberships, and the obligations of the system to retired members continue throughout their lives and thereafter until all obligations to their beneficiaries under optional settlements have been discharged. The obligations of any member to the system continue throughout his membership, and thereafter until all of the obligations of the system to the member have been discharged.

5. Section 20164, subdivision (b), provides, in pertinent part, that for purposes of payments into or out the retirement fund for adjustments of errors or omissions, the period of limitation of actions shall be three years and, in cases where the system makes an erroneous payment to a member or beneficiary, the system's right to collect shall expire three years from the date of payment.

6. CalPERS has no authority other than that granted by statute. It has the authority to pay benefits to a member only when the statutes authorize it and then only in the amount authorized. (See, *Hudson v. Posey* (1967) 255 Cal.App.2d 89.)

7. Here, the Public Employees' Retirement Law provides that respondent, a CalPERS member, should receive only the retirement allowance and benefits to which he is entitled. In May 2011, respondent retired on the basis of service and began receiving a retirement allowance from CalPERS. In late 2012, while reviewing respondent's account for purposes of his Request for Service Credit Cost Information, CalPERS discovered that, nine years earlier, it had mistakenly or erroneously credited respondent's account with double the amount of service credit and employee contributions for four fiscal years. CalPERS has presented documentation that this error was made due to mistake or inadvertence, or excusable neglect following its receipt of payroll information from respondent's employer LACOE, and how the error resulted in an overpayment in respondent's retirement allowance, which is subject to both reduction prospectively and collection for past overpayments. CalPERS has also shown that that the correction of the error by removing the service credit and employee contributions will result in a decrease in respondent's retirement allowance to an amount that he is entitled to, and that respondent was informed of the error and CalPERS' decision to correct the error in timely manner after its discovery.

Accordingly, while it made an error and did not discover its error for several years, CalPERS is nevertheless required under section 20160 to correct the error and may therefore remove the net erroneous amounts of 3.16 years of service credit and the $10,543.02 of employee contributions from respondent's account. CalPERS may also require respondent to repay the overpayments of retirement allowance resulting from the error that were paid to him since he began receiving his retirement allowance in May 2011. Respondent is entitled only to the benefits that he is allowed under the law and not to any excess, above that to which he is statutorily entitled, due to CalPERS' error.[4]

[4] Jurisdiction does not exist in this appeal to consider respondent's request that he be allowed to accept CalPERS' offers to purchase additional service credit, as described in Findings 13 and 15 above. This appeal concerns only whether CalPERS' removal of erroneously credited amounts of service credit and employee contributions was proper and whether CalPERS may require respondent to repay overpayments of retirement allowance resulting from this error. Moreover, respondent has not filed any Election to Purchase Service Credit.

8. Respondent claims that he relied on CalPERS' estimate of retirement allowance to decide to retire and relied on CalPERS' calculation and payment of his retirement allowance for two years or more to support himself and his family and plan his finances. He argues that, despite any errors made by CalPERS, he had a contract when CalPERS accepted his service retirement application and he began receiving his retirement allowance and that this contract cannot be changed without his consent and he should continue to receive the same amount of his retirement allowance. Respondent ostensibly argues that CalPERS should be estopped from changing or decreasing his retirement allowance.

9. It is well settled that estoppel cannot be used to enlarge the powers of the Public Employees' Retirement System (*Page v. City of Montebello* (1981) 112 Cal.App.3d 658 at 667; *Board of Administration, State Employees' Retirement System v. Ames* (1963) 215 Cal.App.2d 215 at 230; and *Boren v. State Personnel Board* (1951) 37 Cal.App.2d 634) or to provide a benefit to a retiree which is not otherwise statutorily authorized because public employee benefits are wholly statutory. (*Hudson v. Posey, supra.*) Estoppel will not be applied against the government if doing so effectively nullifies a strong rule of policy adopted for the benefit of the public. (*Lentz v. McMahan* (1989) 49 Cal.3d 393; *County of San Diego v. Cal. Water* (1947) 30 Cal.2d 817.)

10. Here, even if it is assumed that respondent established the elements of estoppel, which were enunciated in the case of *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, public policy dictates that estoppel should not apply to the facts of this appeal. If CalPERS were to be estopped from correcting its error and determining the proper amount of respondent's retirement allowance, then CalPERS would be paying respondent a retirement allowance greater or in excess of what he is entitled to receive under the law. Estoppel is not properly established against CalPERS because to do so would violate a strong public policy that CalPERS follow the Public Employees' Retirement Law in determining the retirement allowance of its members.

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Wherefore, the following Order is hereby made:

ORDER

1. The appeal of respondent Gus Frias from the determination of the Executive Office, Member and Benefits Branch, California Public Employees' Retirement System, is denied, based on the Conclusions of Law 1 – 10 above, jointly.

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2. The Statement of Issues, Case No. 2013-0981, and the determination of the California Public Employees' Retirement System to remove service credit and employee contributions erroneously added to respondent's account for the fiscal years 1995 through 1999, must be sustained.

3. Respondent Gus Frias shall repay to California Public Employees' Retirement System the overpayment of retirement benefits arising from CalPERS' erroneous addition or double-posting of service credit and employee contributions for the 1995-1999 fiscal years. Respondent Gus Frias will be allowed to make the repayments in installment payments.

Dated: November 14, 2014

Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings