ATTACHMENT A

THE PROPOSED DECISION

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

In the Matter of the Appeal Regarding Membership Eligibility of: SHAWN BENNETT, Respondent, and RANCHO CALIFORNIA WATER DISTRICT, Respondent.	Case No. 2013-0686 OAH No. 2014080163

PROPOSED DECISION

Susan J. Boyle, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Riverside, California, on April 6, 2015, and in San Bernardino, California, on April 29, 2015.

Christopher C. Phillips, Staff Attorney, represented the petitioner, Karen De Frank, Division Chief, Customer Account Services Division, California Public Employees' Retirement System, State of California (CalPERS).

Douglas F. Walters, Attorney at Law, Law Offices of Douglas F. Walters, represented respondent, Shawn Bennett.

Jamie E. Wrage, Attorney at Law, Gresham Savage Nolan & Tilden, represented respondent Rancho California Water District (Rancho).

Oral and documentary evidence was presented. The record remained open until June 5, 2015, to allow the parties to file written closing arguments. Rancho's Closing Brief was filed on May 13, 2015, and marked Exhibit 45. CalPERS's Closing Brief was filed on May 27, 2015, and marked Exhibit 29. Rancho's Reply Closing Brief was filed on June 5, 2015, and marked Exhibit 46. The matter was submitted on June 5, 2015.

PUBLIC EMPLOYEES RETIREMENT SYSTEM
FILED July 8 20 15

ISSUES

1. Was respondent Shawn Bennett a common law employee of respondent Rancho during the period of July 1, 2010, through August 28, 2012, and therefore, qualified for membership with CalPERS?

2. If respondent Shawn Bennett was an employee of respondent Rancho during the period of July 1, 2010 through August 28, 2012, is Rancho responsible for payment of all arrears contributions to CalPERS and/or a $500 administrative fee?

FACTUAL FINDINGS

CalPERS Functions

1. CalPERS is the state agency responsible for the administration of the Public Employees' Retirement Law (PERL). (Gov. Code, § 20000 et. seq.) Under the PERL, CalPERS members and their employers contribute to pension and health funds under defined benefit plans. CalPERS members receive health and retirement benefits based upon their contributions and status as employees. CalPERS manages the pension and health benefits for public employees, retirees, and their families. CalPERS's Board of Administration is responsible for determining who qualifies as an employee under the PERL and who is eligible for CalPERS membership.

Procedural History

RANCHO CALIFORNIA WATER DISTRICT

2. Rancho is a public corporation of the State of California. It supplies water to Temecula and the surrounding communities.

Jeff Armstrong is Rancho's Interim General Manager and Chief Financial Officer. He has worked for Rancho for 27 years. One of Mr. Armstrong's duties is to approve annual independent contractor service agreements.

Jason Martin is Rancho's Information Technology (IT) and Customer Service Manager. He has worked for Rancho for nine years. His duties include overseeing independent contractors that provide IT work for Rancho's Finance Department.

Dale Badore was Rancho's Datacenter Operations Supervisor from April 2008 through Mr. Bennett's tenure at Rancho. Mr. Badore supervised Mr. Bennett's work.

3. Patrick Elsasser was a Systems Administrator and reported to Mr. Badore.

2005 TO 2008 - MR. BENNETT'S WORK AT RANCHO AS AN EMPLOYEE OF UMETECH

4. Effective June 1, 2005, Umetech, Inc. entered into a contract with Rancho to provide "professional services for the following project: Computer Services." The contract referred to Umetech as "Consultant" and specified that "CONSULTANT shall perform the services provided for within this agreement as an independent contractor, and not as an employee of [Rancho.]" The scope of work to be performed by Umetech was described as "As assigned by General Services Manager." The payment schedule provided job numbers for billing services relating to Data Base Administration, Web Page/Intranet, and LAN/Help Desk. Help Desk services were to be billed at $45.00 per hour and "all other requirements" were to be billed at $65.00 per hour. The contract authorized a total expenditure of $47,650.00 for Umetech's services.

Mr. Bennett was employed by Umetech. Umetech assigned him to provide help desk services to Rancho under the consulting agreement.

2008 CONTRACT BETWEEN RANCHO AND STRANGE PC

5. In 2008, Umetech decided not to renew the portion of its contract with Rancho that obligated it to provide help desk services. Mr. Bennett asked Rancho to contract directly with him for these services, and Rancho agreed. Mr. Bennett formed Strange, PC, originally a sole proprietorship,[1] obtained a business license, and procured business insurance. In early June 2008, Rancho executed a Purchase Order "for Help Desk computer services for the period July 1, 2008 through June 30, 2009, fixed fee of $45.00 per hour, not to exceed $48,000.00 annually." No other terms or conditions of the agreement were contained on the Purchase Order. The supplier on the Purchase Order was identified as Strange PC. In May 2009, Rancho amended the Purchase Order to authorize an expenditure of $58,000.00.

6. In June 2009, Rancho executed a Purchase Order for "Help Desk computer services" to be provided by Strange PC for the period July 1, 2009, through June 30, 2010. The maximum authorized expenditure under the Purchase Order was $48,000.00.

7. On July 1, 2010, Mr. Bennett entered into a one year contract with Rancho to provide "professional services for the following project: System Administration & Support Services." The contract originally described the project as "Computer Help Desk Services," but that description was interlineated and "System Administration & Support Services" was handwritten in its place; both parties to the contract initialed the change. The contract provisions in the 2010 agreement were essentially the same as the provisions in the contract between Rancho and Umetech, including the acknowledgement that Strange PC was performing services as an independent contractor and not as Rancho's employee. The contract designated Mr. Bennett as the Project Manager and authorized a maximum expenditure of $110,000.

[1] Mr. Bennett subsequently converted Strange PC to a limited liability corporation.

The 2010 agreement included provisions for "Time of Performance and Notice Regarding Late Delivery" that were not included in the Umetech contract. The time provisions required Strange PC to "perform such services in a prompt and timely manner in accordance with the activity schedule attached hereto as Exhibit C" and excused late performance only if Strange PC was unable to timely perform because of situations beyond its control. For any delay in the provision of services, Strange PC was required to file a written request for additional time. Rancho retained the ability to "decide whether and to what extent an extension of time shall be allowed." The activity schedule attached to the agreement stated only "Per IT Manager." The agreement did not specify an hourly rate of compensation[2] but provided that progress payments would be made "as approved by IT Manager."

For the first time, the agreement attached a detailed "Scope of Work." The Scope of Work attachment specified that Mr. Bennett was required to work on Monday through Thursday from 7:00 a.m. to 4:00 p.m. and on Friday from 8:00 a.m. to 5:00 p.m. and that he was to be onsite at Rancho's offices "each Monday through Friday." He was required to provide the following services to Rancho:

> Troubleshoot and administer LAN/WAN physical network
>
> Assist in administering and managing all servers
>
> Assist in administering an asset management database
>
> Assist in the management of legacy enterprise financial accounting system
>
> Administer and manage the document management image server and clients
>
> Assist in administering VoIP telephone system with advanced features of ACD, IVR and voicemail
>
> Ensure the integration of GIS and subsystems to the network
>
> Administer and oversee the check processing system server and scanner
>
> Assist in administering the web and firewall servers
>
> Assist in administering and managing the District internet, intranet and email server

[2] Mr. Bennett invoiced Rancho at $65.00 per hour.

Assist with long range capacity planning, program development for LAN systems, database integration, web based business, and the District internet and Intranet

Assist in development, implementation and overseeing of a comprehensive disaster recovery plan

Respond to service and trouble calls from users in a courteous and efficient manner

Handle system and end user problem resolution professionally and within District SLA's

Repair PC hardware, peripheral and communication devices; including coordination with outside service technicians and service providers

Deploy new and replacement upgrades for user desktop hardware and software

Assist with administering and enforcing District software and license policy guidelines

Additional services as directed by the RCWD Datacenter Operations Supervisor and/or IT/Customer Service Manager.

8. A Position Description dated July 20, 2011, described the duties and functions of a Systems Administrator and a Senior Systems Administrator. The Systems Administrator was defined as being "responsible for administering District wide technology systems and related supporting infrastructure consisting of a variety of operating environments on various hardware platforms." The list of the example of duties to be performed by the Systems Administrator were the same as those specified in the 2010 contract between Rancho and Strange PC.

9. Rancho provided Mr. Bennett with an identification badge containing his photograph. His name and photograph were included in Rancho's Human Resources's database of "Employee Photos." Rancho provided Mr. Bennett with a cellular telephone and included his name and cellular phone number in a contact list of Rancho employees. The cellular phone number listed was the number for Rancho's Help Desk. Rancho assigned Mr. Bennett a desk telephone and included his desk phone extension in a list of other assigned Rancho desk telephones. Rancho provided Mr. Bennett with a work space and desk computer.

2011 CONTRACT BETWEEN RANCHO AND STRANGE PC

10. Rancho renewed its contract with Strange PC in an agreement effective July 1, 2011. As in the 2010 agreement, the authorized contract amount for 2011 was $110,000.00. Unlike the 2010 contract, the project description of "Computer Help Desk Services" was not interlineated and replaced. The Scope of Work contained in this contract was described only as "As assigned by IT Manager." In all other respects, the 2011 contract was the same as the 2010 contract.

RANCHO'S ATTEMPT TO ADD EMPLOYEE POSITIONS

11. Prior to February 2012, Rancho engaged NexLevel Information Technology, Inc. to provide assistance in developing a technology plan that "identified projects to increase staff efficiency and productivity, manage billing and revenue collections, support asset management and maintenance activities, enable efficient customer service and support overall financial planning and operations." In February 2012, NexLevel provided Rancho a draft Information Technology Master Plan (ITMP) for discussion. The plan was intended to provide "a roadmap that will help [Rancho] close the gap between current and future technology needs."

NexLevel described Rancho's then-current IT environment as including four IT staff who reported to the IT/Customer Service Manager (Jason Martin), who, in turn, reported to the CFO/Treasurer (Jeff Armstrong). The ITMP noted that "IT support also includes a 40-hour per week contract position. The contractor provides help desk support, as well as systems administration and database administration services."[3] NexLevel determined that Rancho's IT department rated high in service delivery but that the high rating was dependent upon staff working overtime and on "additional support . . . provided by a contractor who works 40 hours per week."

A portion of the ITMP discussed "Plan Enabling Recommendations." NexLevel stressed that "*if [Rancho] does not implement these Plan Enabling Recommendations, the ability to implement the Strategic Project Recommendations . . . will be at best hindered, with projects being delayed, and at worst, be completely hampered.* As such, these Plan Enabling Recommendations should be addressed as soon as possible." (Italics in original.) One of the Enabling Recommendations was to "Convert the Existing Contract Position to a Permanent Position and Add One IT Business Analyst in FY 12/13 . . . ." NexLevel's recommendations included the following:

> Make the existing Systems and Database Administrator position, which is currently filled by a contractor, a full-time

[3] To gather information and analyze Rancho's needs, NexLevel conducted face-to-face interviews with the IT Manager and staff and face-to-face and telephone interviews with 40 employees. In addition, NexLevel reviewed 82 survey responses from employees, toured the facility, and conducted follow-up interviews with IT staff as necessary.

permanent position. Typically, supplemental IT contractor support is appropriate for interim assistance with projects or to backfill when dedicated IT staff members are unavailable. While this position may have initially been viewed as temporary, the services now supported by the individual in this role have become necessary to support the District and will be required on a long-term basis. NexLevel's recommendation is to hire the current contractor, as that individual has developed specific skills and institutional knowledge that may be difficult to replace with another outside hire."

12. On April 5, 2012, IT/Customer Service Manager Jason Martin presented the 2012 ITMP to Rancho's board. According to the minutes of that meeting, Mr. Martin represented the 2012 ITMP to be a revision of Rancho's existing plan that had been developed in 2005. The board voted to adopt the 2012 ITMP, but it did not authorize the creation of additional employee positions.

13. Mr. Armstrong testified at the administrative hearing. He stated that Rancho's board accepted the vision of the 2012 master plan prepared by NexLevel, but "they did not give authorization to implement the initiatives that were contained within the Master Plan. But rather, for any of those, we needed to come back and seek later approval on a case-by-case basis for each of the initiatives." He noted that the 2005 Master Plan recommended that Rancho create new IT employee positions, but no new positions were created. Similarly, the 2012 Master Plan recommended creating new IT employee positions, but the board did not approve adding new positions. Additionally, Mr. Armstrong testified that he believed the 2012 Master Plan was referencing Umetech when it recommended creating a full-time position for a systems and data base administrator and not Mr. Bennett. Umetech remained under contract with Rancho for services other than those for which Strange PC contracted, including data base administration. Umetech employed "a handful" of people to provide services to Rancho. Mr. Armstrong believed that the 2012 Master Plan referred to Umetech despite the fact that the plain language in the 2012 Master Plan referenced an individual because he did not believe Mr. Bennett provided data base administration to Rancho.

14. Mr. Martin also asserted that the 2012 Master Plan referred to Umetech when it recommended converting an existing contract position to a full time employee position. Mr. Martin agreed that Mr. Bennett was the only individual IT contractor who was working a 40-hour work week, but he stated that Umetech provided a total of 40 hours of work per week albeit those hours were worked by more than one person.

2012 REQUEST TO BE AN EMPLOYEE OF RANCHO AND TERMINATION OF SERVICES

15. In June to August 2012, Mr. Armstrong was working with Strange PC through Mr. Bennett to execute a new contract for services for the 2012 fiscal year. Rancho had not intended to replace Strange PC with a new contractor when discussions concerning the 2012 contract commenced.

16. In June 2012, Mr. Bennett was provided with a proposed 2012 agreement. The 2012 proposal was identical to the 2011 contract except that it authorized a contract amount of $125,000.00. Mr. Bennett was also given a "Statement of Objectives" dated June 19, 2012. The Statement of Objectives identified the contract "project" as Systems Administration and listed 14 items under "Scope or mission." The Scope or mission stated that "The scope and mission of the 2012/2013 Systems Administration project is to include system and user level support for day-to-day operation and maintenance of the following systems: . . ." Among the systems listed was "Verizon SmartPhones and Cellular phones – purchases and maintenance;" "Verizon internal (built-in) and external (plug-in) WWAN access cards (Air cards);" "Nextel/Sprint Push to Talk phones and communication devices – purchases and maintenance;" "Printer, FAX, copier fleet installation, maintenance and troubleshooting;" "Network hardware and wiring management;" Check processing scanner;" and "PC, laptop and server hardware."

17. After receiving the 2012 proposal, Mr. Bennett made a "formal request" in an email to Mr. Badore, dated June 21, 2012, that Rancho "evaluate my classification as independent contractor and consider employee classification." Mr. Bennett stated he was aware that Rancho's attorneys had inquired about his independent contractor status. He wrote that he was not aware of anyone questioning his status before and asserted that "I have always performed the tasks given to me and believe I have set a very good example for myself and representing the [Rancho] IT department . . . ." By July 26, 2012, Mr. Bennett had not received a response to his request.

18. Mr. Armstrong testified that, sometime in May, June or July, 2012, prior to presenting Strange PC with the second version of the proposed 2012 contract, Rancho management requested the board to add a new position in IT for help desk and systems administration. The position that was requested would include some of the duties performed by Mr. Bennett. The Rancho board did not grant the request.

19. Rancho modified the Statement of Objectives. In a meeting with Mr. Armstrong and Mr. Martin at the end of July 2012, Rancho presented Mr. Bennett with a new proposed contract for Strange PC. The new document was less specific and more expansive. The revised "Scope or mission" statement stated:

> The scope and mission of the 2012/2013 Systems Administration project is to provide systems support, application support and user level help desk support for day-to-day operations and maintenance of several systems using independent judgment with limited direction. Systems to be supported can include any District system that falls under the Information Technology Department's area of responsibility. The District will not have nor exercise any control or direction over the methods by which Contractor performs the work and function called for under the Agreement and this Statement of Objectives. The sole interest of the District is to ensure that the

services performed by the Contractor are performed and rendered in a competent professional and satisfactory manner.

According to Mr. Armstrong, neither version of the Statements of Objectives was intended to change the nature of the work Strange PC provided to Rancho.

Mr. Armstrong testified that, in the July meeting, he told Mr. Bennett that there were no positions open and no new ones were being created. Mr. Armstrong told Mr. Bennett that Rancho's board was supportive of his contract position in the budget, and Mr. Armstrong asked Mr. Bennett to sign the agreement. Mr. Bennett did not sign the agreement at that meeting but continued to express his belief that he should be classified as an employee.

20. Because Mr. Bennett did not sign the 2012 contract, Rancho took action to terminate its contract with Strange PC. By letter dated August 13, 2012, Mr. Armstrong notified Mr. Bennett that Rancho had decided to terminate its contract with Strange PC "for convenience[4]" and provided him 15 days notice as required by the agreement. Rancho advised Mr. Bennett that he would not be required to go to Rancho's offices during the 15 day notice period, and he would be paid for all work and hours he would have been expected to perform during the notice period.

ATTEMPT TO OBTAIN UNEMPLOYMENT COMPENSATION

21. After he was advised that Rancho was terminating his contract, Mr. Bennett applied to California's Employment Development Department (EDD) to receive unemployment compensation. EDD determined that Mr. Bennett was eligible for benefits under the Unemployment Insurance Code. Rancho appealed that determination and a hearing was held before the Unemployment Insurance Appeals Board (UIAB). The board reversed EDD's determination and found that Mr. Bennett was not Rancho's common law employee and, therefore, was not eligible to receive unemployment benefits.

In reaching its determination, the board observed that the contract between Mr. Bennett and Rancho was for a specific duration; Mr. Bennett "initiated the proposition to [Rancho] to form a contract between himself as an independent entity and [Rancho] for the performance of computer maintenance and repair services;" he formed a LLC and obtained a business license and insurance; he was permitted to work for other clients; he was permitted to, but chose not to, hire other employees to perform work for Rancho; he was provided a workspace and computer, but he was able to use his own laptop equipment to perform the work; his photograph was included in Rancho employee contact lists; he was assigned an email address and cellular telephone; he was required to be at Rancho during regular work hours; and he attended training provided by Rancho.

[4] Under the clause "Termination for Convenience," Rancho was authorized to terminate its contract with Strange PC for "any reason" by giving 15 days notice.

ATTEMPT TO OBTAIN MEMBERSHIP IN CALPERS

22. After Rancho terminated the Strange PC contract, Mr. Bennett requested retirement benefits through CalPERS. He contended that he was Rancho's employee and was entitled to CalPERS membership.

23. Rancho and Mr. Bennett responded to Employment Relationship Questionnaires they received from CalPERS. Among other things, Rancho represented that Strange PC did not perform work regularly performed by other Rancho employees; however, Rancho noted that, if Mr. Bennett was not at the facility or if the work load was very high, Rancho employees would be required to assist with some of the tasks normally performed by Strange PC. Rancho argued that it was evident it was not attempting to avoid the expense of hiring an employee because Strange PC was compensated "at a rate that would . . . be more than an employee's hourly pay rate adjusted to include all fringe benefits."

Mr. Bennett responded to the questionnaire and wrote that he performed the "same duties as the System Administrator." He stated that he "performed computer related services [for other clients] on rare occasions however I have not sought or advertised due to the hrs I am required to be at [Rancho.]"

24. By letters dated February 11, 2013, Emily Perez de Flores, Manager of CalPERS's Membership Reporting Section, Customer Account Services Division, notified Rancho and Mr. Bennett that CalPERS had reviewed the terms of Mr. Bennett's employment and determined the following: "Mr. Bennett provided services as a common law employee of the District from July 1, 2007, through August 28, 2012." "[T]he services to be performed from July 1, 2010 to August 28, 2012 [were] expected on a full-time basis . . . ." The district will be liable for the cost associated with this period . . . ."

Government Code section 21020 defines public service for purposes of CalPERS membership. Subdivision (a)(2) provides, in effect, that when a part-time employee becomes full time and qualifies for CalPERS membership, the service prior to full-time employment can qualify as public service. Ms. de Flores wrote that, regarding the period of July 1, 2007 through June 30, 2010, Mr. Bennett could request to purchase credit at his own expense for "Service Prior to Membership."

CalPERS applied the common law employment test to find Mr. Bennett eligible for membership. Ms. Perez de Flores noted that "In determining whether one who performs services for another is an employee or an independent contractor, the most important factor is the right to control the manner and means of accomplishing the desired result." Ms. Perez de Flores listed a number of factors that influenced CalPERS's determination that Mr. Bennett was a common law employee, including the fact that EDD identified Mr. Bennett as

Rancho's employee.[5] On March 8, 2013, Rancho appealed CalPERS's determination that Mr. Bennett was a common law employee.

25. On October 30, 2013, petitioner signed a Statement of Issues naming Mr. Bennett and Rancho as respondents. The Statement of Issues seeks a determination of whether Mr. Bennett was an employee of Rancho "during the period of July 1, 2010 through August 28, 2012, thereby qualifying for membership with CalPERS" and, if Mr. Bennett was eligible for membership, whether Rancho is responsible for all arrears contributions plus a $500.00 administrative fee.

26. By letters dated November 4 and 5, 2014, CalPERS advised Rancho and Mr. Bennett that it had revised its February 2013 determination and determined that Mr. Bennett qualified for CalPERS membership on June 1, 2009, rather than July 1, 2010. He could apply to purchase service credit, at his own expense, for the period July 1, 2007 through May 31, 2009. Rancho appealed the findings set forth in CalPERS's revised determination letter.[6]

CalPERS's Position Regarding Mr. Bennett's Eligibility for Membership

27. Jamilla Nelson, a Retirement Program Specialist II for CalPERS, testified at the administrative hearing. She was assigned to determine whether Mr. Bennett provided services to Rancho as an independent contractor or a common law employee.

28. Ms. Nelson reviewed the documents provided by Mr. Bennett and Rancho and determined that Mr. Bennett was Rancho's common law employee. She found the emails provided by Mr. Bennett were persuasive in finding that Rancho exercised control over when and how Mr. Bennett performed his job duties. She also found compelling that the services listed in the agreement between Mr. Bennett and Rancho were identical to those identified in the duty statement for a Rancho employee. Ms. Nelson originally determined that Mr. Bennett qualified for CalPERS membership in 2010; however, after receiving additional documents, she amended her determination and concluded he was eligible from June 1, 2009. Ms. Nelson believed the documents and information Mr. Bennett provided were more persuasive than those Rancho provided.

29. In support of CalPERS's position that Rancho is required to pay all arrears contributions and an administrative fee, Mr. Nelson stated that CalPERS sends "lots of communications" to employers warning them to be vigilant about properly classifying persons working for them to ensure they are enrolled in membership when required. Ms. Nelson contended Rancho knew or should have known that Mr. Bennett was an employee

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[5] CalPERS made its determination before the UIAB's decision reversed EDD's finding.

[6] The Statement of Issues was not amended to reflect the revised date of employment in CalPERS's November 2014 letters.

and not an independent contractor and that, therefore, they were responsible for the arrears and fine.

Facts Considered in Determining Whether Mr. Bennett was a Common Law Employee or an Independent Contractor

30. The following facts were considered in determining whether Mr. Bennett was a common law employee or an independent contractor:

a. In 2004, Mr. Bennett was an employee of Umetech. He was assigned to work at Rancho one day a week from 2005 until mid-2006. Prior to working at Rancho, Mr. Bennett did not have any knowledge, expertise or experience in the computer systems Rancho used. He received his training on-the-job and through training sessions organized by Rancho. He does not hold any certificates of completion or accomplishment in the computer industry. In mid-2006, Mr. Bennett was assigned to work full-time at Rancho.

b. In 2008, Rancho advised Umetech that it was reducing Mr. Bennett's position to part time. Umetech determined not to continue to contract with Rancho for the part-time position. Mr. Bennett asked Rancho if he could take over the part-time position as an independent contractor.

c. Rancho told Mr. Bennett he was required to have a business license and insurance to contract with Rancho. Mr. Bennett formed Strange PC, obtained the necessary business license and insurance, and worked part-time as a contractor for Rancho until approximately January 2009.

d. Strange PC filed tax returns and paid taxes. Strange PC reported some income from other sources when it first obtained the Rancho contract. After Rancho terminated Strange PC's contract, Mr. Bennett allowed the entity to be suspended.

e. Mr. Bennett did some computer work for Mr. Armstrong's daughter for which he was paid.

f. Mr. Armstrong saw Mr. Bennett doing computer work for a Strange PC customer.[7]

g. When he worked part-time for Rancho, Mr. Bennett attempted to develop other customers. He did some work for others during that time, but it was not substantial.

[7] Mr. Bennett stated he did some computer work for this company in exchange for services.

h. Rancho employees are permitted, with approval, to perform outside work and to own and operate outside businesses.

i. Mr. Bennett maintained a LinkedIn page and website for Strange PC.

j. In January 2009, Mr. Badore advised Mr. Bennett that Rancho wanted to covert his position to full-time. Thereafter, Mr. Bennett was required to work on Monday through Thursday from 7:00 a.m. to 4:00 p.m. and on Friday from 8:00 a.m. to 5:00 p.m. to assure that he would be available during Rancho's business hours. Mr. Bennett was required to take his lunch break when Mr. Badore scheduled it.it.

k. Mr. Bennett stated that, once he began working full-time for Rancho, he did not have time to seek other customers, and he did not do work for any other company.

l. Mr. Bennett performed all of his work for Rancho onsite. He did not have remote access.

m. Rancho assigned Mr. Bennett a landline telephone, a cellular telephone, an e-mail address, and a place to work. His contact information was included in lists that contained contact information for Rancho employees. His photograph was taken in 2007 and was maintained in the human resources data base of employee photos. Rancho provided him with an identification badge that contained his photograph, but not an employee number. Other independent contractors received identification badges that did not include employee numbers.

n. Rancho has a procedure through which it processes new employees. Mr. Bennett did not go through the new employee process. Mr. Bennett did not receive employee benefits from Rancho.

o. Mr. Bennett used the Strange PC e-mail address for Rancho business, and he used it to submit his invoices for compensation.

p. Mr. Bennett viewed Mr. Badore and Mr. Martin as his supervisors.

q. Mr. Bennett and Mr. Elsasser responded to help desk requests.

r. Mr. Bennett was included on emails between Mr. Badore, Mr. Martin and Mr. Elsasser.

s. Rancho recognized Mr. Bennett's exceptional service by awarding him the Superstar Award, an award given to Rancho employees for exceptional work performance.

t. A Rancho employee instructed Mr. Bennett about his responsibilities for Rancho's Verizon account. For example, the employee instructed him that it was his duty to add employee phone lines to Verizon. Rancho also authorized Mr. Bennett's use of Rancho's account with Verizon to order items.

u. In June 2012, Mr. Bennett wrote to Sprint Solutions, Inc. on behalf of Rancho. In the letter, Mr. Bennett certified that he was authorized to bind Rancho in an agreement to purchase equipment and services from Sprint. No evidence was presented that belied the representation that Mr. Bennett possessed such authorization.

v. Rancho employees receive annual performance evaluations; Mr. Bennett did not.

w. Rancho employees sometimes receive merit pay increases; Mr. Bennett did not.

x. Rancho employees were eligible for bonuses; Mr. Bennett was not.

y. Mr. Bennett was compensated on an hourly basis.

z. Rancho employees and contractors were paid on different pay cycles. Employees are paid every two weeks for a total of 26 payment; contractors are paid twice a month for a total of 24 payments. Mr. Bennett was paid twice a month.

aa. Mr. Bennett occasionally was asked to perform tasks that were not described in his scope of duties. For example, Mr. Bennett was asked to bring tape to Rancho's conference room, to move computer furniture, and to move computers. Also, Mr. Bennett and Mr. Elsasser disassembled a cabinet in the help desk area together. Some of these requests were made when Mr. Bennett was a Umetech employee. Mr. Martin believed most of these tasks fell within the contract because they involved a basic support function. He stated, for example, that moving a computer also entailed making sure the computer was set up correctly at the new location and operating properly.

bb. Mr. Bennett was sometimes directed to complete a task "ASAP," told to do a task quickly, or otherwise given directions regarding the tasks that were his responsibility.

cc. Mr. Bennett testified that he asked Mr. Badore whether he could bring in someone else to do some of the work for Rancho under the Strange PC contract, and Mr. Badore said "no." Mr. Armstrong and Mr. Martin

denied any knowledge of a request by Mr. Bennett to bring in another person; they asserted that Mr. Bennett could have, with prior approval, hired another person to perform the contract duties.

dd. When Rancho presented the 2012 contract to Mr. Bennett, the "Scope of Work" document defined the project as "systems administrator."

ee. Mr. Bennett was not listed on Rancho organization charts from 2008 through 2012.

ff. Mr. Bennett submitted invoices for payment to Rancho. The invoices were on Strange PC stationery and included the statement "Make all checks payable to Strange PC." The email address on the invoice was that of Strange PC. The tasks identified were for "System Administration and Support Services" or "Helpdesk Support Services."

gg. The 2010 and 2011 contracts that Mr. Bennett and Rancho signed specifically stated that Mr. Bennett was acting as an independent contractor and not as an employee.

hh. The 2010 and 2011 contracts that Mr. Bennett and Rancho signed required Strange PC to obtain "specific authorization to proceed" from Rancho before proceeding with "all or any portion of the services described in [the Scope of Work.]"

ii. Rancho provided employment-related training to Mr. Bennett. Mr. Bennett attended training sponsored by Rancho when he was employed by Umetech and when Strange PC was under contract with Rancho.

jj. Outside providers of services to Rancho communicated with Mr. Bennett as a representative of Rancho. This occurred when he was employed by Umetech and when Strange PC was under contract with Rancho.

kk. Mr. Martin testified that Strange PC determined the order in which service requests were completed and the method required to correct the problems described in the help desk tickets.

ll. Mr. Armstrong testified that each fiscal year, beginning in July and ending in June, Rancho evaluated its needs and prepared a budget based on expectations and available resources. If it were determined that Rancho required services outside of what its employees could provide, Rancho entered into independent contracts for those services.

mm. Mr. Martin does not instruct Mr. Elsasser on how to perform the services he provides to Rancho.

Rancho management viewed the services Strange PC provided to be "low level" technical services.

31. Mr. Armstrong understood that the services Strange PC provided to Rancho included "troubleshooting issues that users were experiencing, such as programs not opening or working or loading. It could be printer hardware related issues, configuration issues on their desktop, as well as setting up cell phones, getting cell phones to employees, getting those set up and activated, managing our document management system, some of our phone systems. Just generally supporting our network issues . . . ." Help desk services were included in Mr. Armstrong's description of services provided.

32. Mr. Martin stated that Rancho contracts out some IT services because "We have limited staff with core expertise; and a lot of times with the number of systems, the number of applications we support, we require outside assistance with those different systems and applications." Mr. Martin asserted that, as related to the work done by Mr. Bennett, Rancho contracted out help desk services because "there simply weren't enough people to go around to support those services . . . ." He said the job was not an employee position because "It was never an approved position. It was never a position that [Rancho] decided to fulfill." He also stated that Rancho needed to bring in a resource to handle some of the work because they did not have enough employees to do it. "So our thought is that we were outsourcing the lowest level of work, which was the help desk support function." He did not know why that function was outsourced as opposed to having an employee fulfill it.

Mr. Martin described the work performed by Strange PC as "provid[ing] help desk services, primarily end user support. Any time there was an issue with a PC, with a printer, with a telephone, or if an application wouldn't launch or wasn't working, Strange PC would help with those different tasks." He stated that Strange PC was providing systems administration on a basic level on some systems, but the work fell more in line with computer help desk than computer administrator. "Systems administration really refers to high level, deep technical maintenance and management of different systems and applications." "Help desk services would be a much lower level technical skill."

Mr. Martin reviewed the list of duties described in the "Scope of Work" document that was attached to the 2010 contract between Rancho and Strange PC. He claimed that the list was derived from Rancho's systems administrator job description and did not accurately describe the work Strange PC was doing for Rancho at any time. Mr. Martin testified that Strange PC did not perform many of the job duties on the list, and for those that it did perform, it provided only the lower level of technical support, but not the more technical aspects of the needed services. The work Strange PC was doing for Rancho was not systems administrator work but work as a "help desk technician, end user support." Mr. Elsasser, the Senior Systems Administrator, had the skills to do the work performed by Strange PC, but

not the time to do it. Mr. Elsasser performed services of a "much deeper, more technical level.[8]"

Mr. Martin opined that anyone with basic computer skills could adequately provide help desk services at Rancho. No special training was required for most of the requests for services received by Rancho's help desk. The only additional knowledge required to provide help desk services related to proprietary systems Rancho used.

Mr. Martin, Mr. Badore, Mr. Elsasser, Mr. Bennett and other contractors received notice when a help desk ticket was opened by an end-user. The individuals receiving notice that a help desk ticket had been opened reviewed the ticket and assigned it to themselves if it involved their area of responsibility. Mr. Martin stated that when the help desk ticket was "more of a higher level administrator ticket," it would not be handled by Mr. Bennett.

Evidence that Rancho Did Not Know that Mr. Bennett Was a Common Law Employee

33. Mr. Armstrong testified that he did not believe that Rancho had misclassified Mr. Bennett as an independent contractor because Strange PC was an LLC; it had a business license and insurance; he observed on LinkedIn that Strange PC had other clients; and Mr. Bennett performed some work on a computer for Mr. Armstrong's daughter. However, Mr. Armstrong stated that he did not make any determination as to whether Mr. Bennett was classified correctly or incorrectly.

LEGAL CONCLUSIONS

Burden of Proof

1. Absent statutory or case law establishing a different standard, the standard of proof is "a preponderance of the evidence." (Evid. Code, § 115.) In this proceeding, Rancho had the burden of demonstrating by a preponderance of the evidence that Mr. Bennett was an independent contractor rather than an employee during the time period in question.

Eligibility for Membership in CalPERS and Failure to Enroll

2. CalPERS provides retirement benefits to public employees in California pursuant to the Public Employees' Retirement Law (Gov. Code, § 20000 et. seq.). Section 20300, subdivision (b), excludes from CalPERS membership "independent contractors who are not employees."

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[8] Mr. Martin compared the two positions to persons having knowledge about a car. One person knows how to drive the car and put gas in it; the other person knows how to "get under the hood and repair the engine." He compared Mr. Bennett's duties to the former and the systems administrator's duties to the latter.

3. Government Code section 20125 provides that "The Board shall determine who are employees and is the sole judge of the conditions under which persons may be admitted to and continue to receive benefits under this system."

4. Eligibility for CalPERS membership is described as available to"[a]ny person in the employ of a contracting agency." (Gov. Code §20028, subd. (b).)

5. Government Code section 20283 provides that "Any employer that fails to enroll an employee into membership when he or she becomes eligible, or within 90 days thereof, when the employer knows or can reasonably be expected to have known of that eligibility shall be required to pay all arrears costs for member contributions and administrative costs of five hundred dollars ($500) per member as a reimbursement to [CalPERS's] current year budget."

Common Law Employees

6. Although independent contractors who are not employees are excluded from membership in CalPERS, so-called "common law employees" are not excluded. Pursuant to *Metropolitan Water District v. Superior Court* (2004) 21 Cal.4th 491, enrollment of common law employees in CalPERS is mandated. A worker does not have to be on the payroll of the contracting agency to be considered a common law employee of the agency. Nonetheless, the Court confirmed that ". . . only an agency's *employees* – not those performing services for the agency on other terms – may be enrolled in CalPERS." (*Id.* at p. 499.) In *Metropolitan,* the California Supreme Court noted that it was not determining whether the particular workers at issue were common law employees, but it set forth pertinent factors that should be considered in determining whether a worker was an employee or an independent contractor in accord with its previous decisions in *Tieberg v. Unemployment Ins. App. Bd.* (1970) 2 Cal.3d 943, 949 and *Empire Star Mines Co. v. Cal. Emp. Com.* (1946) 28 Cal.2d 33, 43-44.

> In determining whether one who performs services for another is an employee or an independent contractor, the most important factor is the right to control the manner and means of accomplishing the result desired. If the employer has the authority to exercise complete control, whether or not that right is exercised with respect to all details, an employer-employee relationship exists. Strong evidence in support of an employment relationship is the right to discharge at will, without cause. [Citations.] Other factors to be taken into consideration are (a) whether or not the one performing services is engaged in a distinct occupation or business; (b) the kind of occupation, with reference to whether in the locality, the work is usually done under the direction of the principal or by a specialist without supervision; (c) the skill required in the particular occupation; (d) whether the principal or the workman

> supplies the instrumentalities, tools, and the place of work for the person doing the work; (e) the length of time for which the services are to be perform; (f) the method of payment, whether by the time or by the job; (g) whether or not the work is a part of the regular business of the principal; and (h) whether or not the parties believe they are creating the relationship of employer-employee.

Despite *Tieberg's* laundry list, it is the "right to control the manner and means" test that is most important. An employment relationship is not created merely because the party contracting for services has "the general supervisory right to control the work so as to insure its satisfactory completion in accordance with the terms of the contract." (*Robinson v. City of San Bernardino Police Department* (1998) 992 F.Supp. 1198, 1206.) It is control over the "manner and means," not the results, that is key. Further, context is very important. In *S.G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d, 350, 351, the Court observed that the secondary factors "cannot be applied mechanically as separate tests; they are intertwined and their weight depends often on particular combinations." It is the application of the *Empire Star Mines* and *Tieberg* factors to the facts and circumstances of the employment situation that determines whether an employer-employee relationship exists; the label given to the relationship by the parties is not conclusive. Whether an employer-employee relationship exists is determined on a case-by-case basis.

7. Extensive evidence was presented that detailed the relationship between Mr. Bennett and Rancho. Some of the factors weigh towards an employee relationship and some against it. At least in the 2010 and 2011 contracts, Rancho and Strange PC identified Strange PC as an independent contractor. As to the issue of control, the evidence was inconclusive. The control issue focuses on the employer's "authority to exercise complete control, whether or not that right is exercised." While Rancho management asserted that it did not exercise control over Mr. Bennett's work, there was some evidence that it had authority to exercise control. Further, the evidence did not support a finding that Mr. Bennett had the complete ability to control the manner or means of providing the services he was contracted to perform. To further cloud the issue, Mr. Martin testified that he does not control the work of Mr. Elsasser, who is indisputably an employee. As to this issue, Rancho did not meet its burden by a preponderance of the evidence.

Determinations of common law employee versus independent contractor must be made on a case-by-case basis considering the totality of the facts. To do that, it is necessary to apply the other *Tieberg* factors to the evidence in this case.

8. Rancho originally contracted with Strange PC for part-time help-desk services in 2008. The agreements were in the form of purchase orders until July 2010; the provisions of the purchase orders were set forth in four short lines and in very basic terms. By July 2010, Rancho determined it required Mr. Bennett's services on a full-time basis, and the 2010 contract was a more formal document. Mr. Bennett and Rancho's representative changed the description of the services Strange PC would provide from "Computer Help

Desk Services" to "System Administration and Support Services." Mr. Bennett's work days and hours were fixed by the contract. Eighteen services were to be provided and were listed under the "Scope of Work" attachment. However, the 2011 contract returned the description of services to "Computer Help Desk Services," and the scope of work was described simply as "As assigned by IT Manager." The fact that all of Strange PC's work duties under the 2011 contract were to be assigned by the IT Manager is persuasive evidence of Rancho's control of Strange PC.

9. Other factors that point to an employer-employee relationship is that Rancho provided Mr. Bennett with a work space and equipment, including a cellular telephone, a Rancho identification badge, and email address; he also was listed in the human resources data base. In this case, the nature of the services Strange PC provided required that Mr. Bennett be onsite during regular business hours when Rancho's employees might require his services. The nature of the services also required that Mr. Bennett use Rancho's equipment. End-users who needed to contact Mr. Bennett to obtain help desk services had to have a way to contact and identify him; therefore, these factors are not conclusive of the establishment of an employee-employer relationship between Rancho and Strange PC.

10. The length of time Mr. Bennett worked for Rancho, the full-time nature of the position, the continuing need for Mr. Bennett's services, and the fact that he was paid by the hour and not by the project are indicators of an employer-employee relationship. The fact that both versions of the 2012 Statement of Objectives stated that the scope and mission of the contract was to provide support for Rancho's day-to-day operations is additional evidence that an employer-employee relationship existed.

11. The contracts between Rancho and Mr. Bennett provided that Rancho could terminate the contract for cause, and each could terminate the contract without cause and on 15 days notice. This fact is strong evidence that supports an employment relationship.

12. Mr. Bennett proposed that he was doing the same work, systems administration as Mr. Elsasser, a Rancho employee. Rancho, on the other hand, argued that Mr. Bennett was not performing the more advanced services, but was providing low level computer services. Ironically, Rancho's arguments in this regard are the strongest indicator that an employer-employee relationship exists between Mr. Bennett and Rancho. While Rancho management denied it, the clear language of the 2012 Master Plan developed by NexLevel and adopted by Rancho's board, recommended that Mr. Bennett's position be converted to an employee position. Rancho's management applied to the board to create a full-time employee position, but the board denied the request. On its own, the fact that the board refused to create a full-time position is not relevant to a determination of whether Mr. Bennett was an employee or an independent contractor. However, Mr. Martin stated unequivocally that Mr. Bennett was hired as an independent contractor to do low level computer work because Rancho did not have enough employees to do the work and the board refused to authorize additional employee positions. This testimony is inconsistent with a finding that the work Mr. Bennett was hired to do was the kind of work usually performed by a specialist without supervision and that the skill required to perform the work was so

specialized it was required be performed by an independent contractor. Mr. Martin stated that other Rancho employees could have done the same work – they just did not have the time. Rancho did not outsource its entire IT department; it simply hired Mr. Bennett to supplement the department and to provide needed relief because management refused to hire a sufficient number of employees.

13. Rancho argued that the services provided by Strange PC were not part of Rancho's regular business of providing water to its customers. This argument was disingenuous. Rancho could not operate its business without the computer systems and services provided by the IT department.

14. Although Mr. Bennett created Strange PC as a sole proprietorship and later converted it to a LLC, the evidence demonstrated that he was told by Rancho that he needed to have a business license and insurance to obtain the contract. Strange PC had only a few non-Rancho clients. There was no evidence that Mr. Bennett derived much income from services Strange PC provided to other clients. In any case, Rancho employees were authorized to conduct outside businesses with approval of Rancho management; the fact that Mr. Bennett did a small amount of outside work is not sufficient to sustain a finding that Mr. Bennett was an independent contractor.

15. Upon consideration of all relevant factors, and despite the fact that Rancho and Mr. Bennett signed contracts on two occasions that stated Strange PC was an independent contractor, Rancho did not satisfy its burden of proving by a preponderance of the evidence that Mr. Bennett was an independent contractor.

Must Rancho Pay Penalties and an Administrative Cost

16. Government Code section 20283 requires that "Any employer that fails to enroll an employee into membership when he or she becomes eligible, or within 90 days thereof, when the employer *knows or can reasonably be expected to have known of that eligibility* shall be required to pay all arrears costs for member contributions and administrative costs of five hundred dollars ($500) per member as a reimbursement to [CalPERS's] current year budget." (Emphasis added.) Petitioner asserts that Rancho knew or should have known that Mr. Bennett was an employee who was eligible for enrollment in CalPERS, and for that reason, Rancho must pay the arrears costs and the $500.00 administrative cost.

17. Although Rancho denies it, a preponderance of the evidence established that Rancho knew, or should have known, that Mr. Bennett was providing services as an employee at least from 2010. Many of the factors discussed above indicate that an employer-employee relationship existed even before that time. Rancho had an obligation to be aware of the situation and evaluate Mr. Bennett's employment status.

18. Rancho asserted that Mr. Bennett was paid a much higher hourly rate than he would have earned had he been an employee receiving benefits and that, therefore, requiring

Rancho to pay his arrears portion constitutes a windfall to Mr. Bennett. The legislative intent is clear, and the legislature made no provision to modify the requirement to pay arrears.

CalPERS must of necessity balance the right of members to receive service credit to which they are entitled and the financial hardship CalPERS employers might sustain as a result of an employer's misclassification of a common law employee. Thus, Government Code section 20283 applies only when an employee is not enrolled within 90 days of qualification and only when the employer actually knew or should have known of the member's eligibility. The determination of whether and how much an employer must pay under Section 20283 is made on a case-by-case basis depending on the individual circumstances. In this case, no evidence was presented to suggest that Rancho would suffer financial hardship if it were required to pay the arrears requested and the administrative cost of $500.00.

19. Petitioner determined on or about February 11, 2013, that Mr. Bennett was a common law employee who was eligible for membership in CalPERS from July 1, 2010 to August 28, 2012. That determination was modified in November 2014, when it was determined that Mr. Bennett had become common law employee approximately one year earlier, i.e. that he was a common law employee from June 1, 2009 until August 28, 2012. However, the Statement of Issues was filed before the revised determination was made and, in the hearing in this matter neither CalPERS nor Mr. Bennett sought to have the Statement of Issued amended to comport with the proof. The issue in this case is limited to the period alleged in the Statement of issues. Rancho is obligated to pay arrears contributions for Mr. Bennett for the period July 1, 2010 through August 28, 2012, and an administrative cost of $500.00. This determination does not affect Mr. Bennett's ability to purchase service credit as previously determined by CalPERS.

There is No Collateral Estoppel Effect of the UIAB's Decision on this Proceeding

20. Rancho argues that CalPERS is collaterally estopped from considering the issue of whether Mr. Bennett is a common law employee because that issue was litigated and determined by a final decision of the Unemployment Insurance Appeals Board. *Gikas v. Zolin* (1993) 6 Cal.4th 841, 848-849, succinctly outlined the application of the doctrine of collateral estoppel as follows:

> In general, collateral estoppel precludes a party from relitigating issues litigated and decided in a prior proceeding. (*People v. Sims* (1982) 32 Cal.3d 468, 477 [Parallel citations omitted.]; *Teitelbaum Furs, Inc. v. Dominion Ins. Co., Ltd.* (1962) 58 Cal.2d 601, 604 [Parallel citations omitted].) "Traditionally, we have applied the doctrine only if several threshold requirements are fulfilled. First, the issue sought to be precluded from relitigation must be identical to that decided in a former proceeding. Second, this issue must have been actually litigated in the former proceeding. Third, it must have been necessarily

> decided in the former proceeding. Fourth, the decision in the former proceeding must be final and on the merits. Finally, the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding." (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341 [Parallel citations omitted].) Even if these threshold requirements are satisfied, the doctrine will not be applied if such application would not serve its underlying fundamental principles. (*Id.* at p. 339.)

The parties in the *Gikas* matter agreed that, in their case, the first four elements of collateral estoppel were satisfied and that the determining issue was whether privity existed between the party to be estopped and the party in the prior proceeding. As to that issue, the *Gikas* court stated:

> "[T]he determination whether a party is in privity with another for purposes of collateral estoppel is a policy decision." (*Dyson v. State Personnel Bd.* (1989) 213 Cal.App.3d 711, 724 [Parallel citations omitted.]; see also *Lucido v. Superior Court, supra*, 51 Cal.3d at pp. 342-343 ["We have repeatedly looked to the public policies underlying the doctrine before concluding that collateral estoppel should be applied in a particular setting."]; *People v. Sims, supra*, 32 Cal.3d at p. 477 ["this court must consider whether the traditional requirements and policy reasons for applying collateral estoppel were satisfied by the facts of this case"].) "Privity is essentially a shorthand statement that collateral estoppel is to be applied in a given case [assuming the other requirements are satisfied]; there is no universally applicable definition of privity." (*Lynch v. Glass* (1975) 44 Cal.App.3d 943, 947 [Parallel citations omitted.]; also quoted in *People v. Sims, supra*, 32 Cal.3d at p. 486.) "The concept refers 'to a relationship between the party to be estopped and the unsuccessful party in the prior litigation which is "sufficiently close" so as to justify application of the doctrine of collateral estoppel.'" (*People v. Sims, supra*, 32 Cal.3d at pp. 486-487, quoting *Clemmer v. Hartford Insurance Co.* (1978) 22 Cal.3d 865, 875 [Parallel citations omitted].) (*Id.*)

21. Rancho asserts that EDD/UIAB and CalPERS are in privity of interest because both are charged with enforcing laws that protect employees. That assertion is inaccurate and over simplified.

22. EDD's mission statement reflects its goal of "enhanc[ing] California's economic growth and prosperity by collaboratively delivering valuable and innovative services to meet the evolving needs of employers, workers, and job seekers." EDD/UIAB, as

pertinent to this matter, determines whether California workers who have lost their jobs are entitled to state assistance through the unemployment insurance program.

23. Article XVI, section 17 of the California Constitution provides that "[t]he assets of a public pension or retirement system are trust funds and shall be held for the exclusive purpose of providing benefits to participants . . . and defraying reasonable expense of administering the system." The CalPERS mission statement reflects its role as an effective steward of the CalPERS system with the goal of "deliver[ing] promised retirement and health benefits, while promoting wellness and retirement for members and beneficiaries." CalPERS is tasked with protecting its members and not the general public.

24. The relationship between EDD/UIAB and CalPERS is not sufficiently close to justify estopping CalPERS from litigating the issue of whether, for CalPERS membership purposes, Mr. Bennett is a common law employee.

ORDER

1. The appeal of Rancho California Water District from the decision of the California Public Employees' Retirement System that determined that Shawn Bennett was a common law employee of Rancho California Water District is denied. Shawn Bennett was a common law employee of Rancho California Water District and eligible for membership in CalPERS from July 1, 2010 through August 28, 2012.

2. The appeal of Rancho California Water District of the decision of the California Public Employees' Retirement System to impose a penalty assessment and administrative fine of $500 is denied.

3. In accordance with Government Code section 20283, Rancho California Water District must pay all arrears costs for member contributions for the period July 1, 2010, through to August 28, 2012, and must pay a $500.00 administrative cost.

DATED: July 6, 2015

SUSAN J. BOYLE
Administrative Law Judge
Office of Administrative Hearings