

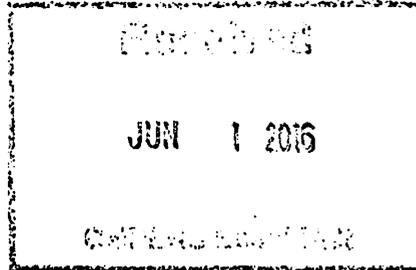
**ATTACHMENT C**  
**RESPONDENT(S) ARGUMENT(S)**

May 23, 2016

**Respondent's Argument**

Ref No. 2015-0464

Cheree Swedensky, Assistant to the Board  
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Re: Board Agenda for June 15, 2016

**SUBJECT:** In the matter of the Appeal Regarding Membership Eligibility of NORMAN R. THORN, respondent, and the CITY OF EL SEGUNDO, Respondent.

Honorable Board Members,

Thank you for considering this case. I am the respondent. I urge the Board to please accept the Judge's order that *"Respondent's membership in CalPERS shall be effective as of May 1, 1998."*

The Judge appeared concerned only with the years that she saw exceeded 1000 hours, even though after membership has been established, this threshold is no longer relevant. In years, where documents are available they should be used to determine my hours worked. Unfortunately there were many months and years where no specific documents were available. The Judge proposed no method for dealing with these months. However, in **Factual Finding 26(c)**, the Judge said:

*26(c) Respondent's evidence confirmed Ms. McLeod's Certification on the Request for Service Credit that during the time frames in question (May 1, 1994, through June 30, 1999, and May 1, 2000 through April 24, 2005), he worked an average of 12 days per month. Respondent's uncontroverted documentation, Mr. Ridley's testimony, and the Respondent's testimony collectively established that Respondent typically worked eight-hour days.*

This SPM Certification may be the only document we have that covers the missing months.

I request the following:

1. Please sustain the Judge's order that my *"Respondent's membership in CalPERS shall be effective as of May 1, 1998."*
2. Please use the time sheets and other documents that do exist to establish the exact time I worked wherever possible, for the entire time period beginning May 1, 1994.
3. For any months where there is no documentation of the specific number of hours worked, please use the power of Government Code Section 20224 to estimate the number of hours worked, as accurately as is possible given all the documentation that is available.
4. Please give me membership credit for all hours worked beginning May 1, 1998.
5. Using the new estimates, please give me an opportunity to purchase the service prior to my new date of membership.

I also believe that CalPERS should consider **formally censuring** the City of El Segundo for providing egregiously false and misleading financial data, and hiding other data in this case, which caused CalPERS to come to an incorrect decision. This faulty information has cost CalPERS extensive administrative expense, the expense of a hearing, and it delayed me receiving the proper pension for over five years. CalPERS has a right to expect its member Cities to act in good faith. Please consider the following:

- The Court found that El Segundo *"provided a paucity of documentation, some of which was erroneous..."* (Legal Conclusions 7(a) ).
- The data that El Segundo did provide was not just erroneous, it was grossly faulty. In a single CalPERS fiscal year (2002/2003), three out of twelve months, or one quarter of the City's data was wrong. One month was just missing from El Segundo's report, with no explanation or note (Feb 2003). Two other months had correct invoice information, including invoice number, invoice amount and number of hours, but the service dates had been altered to put them in a different fiscal year (Factual Finding 28(d)). If this information had been correct, it would have confirmed that I was eligible for CalPERS membership during this year.
- In the City's report, a total of 15 months had altered service dates. It is not likely that 15 individual months would all be incorrect due to an accidental error.
- El Segundo provided supporting documentation for every single month EXCEPT for these 15 months that had been altered. The City claimed that supporting documents were not available for these months because they were past the City's retention policy. (Factual Finding 8, paragraph 2). If these documents had been destroyed as the City implied, where did the correct invoice numbers, hours worked, and dollar amounts for those same months come from?

The City obviously had some source for the correct data. But providing supporting documents from whatever source they used, would have exposed their altered data. This would have made it possible for CalPERS to identify the error, and thus prove my eligibility for CalPERS membership. (Factual Finding 28(d), last sentence). Could it be that these missing documents were an attempt to cover up the City's deceit?

- El Segundo continued to deny the claim, even upon being confronted with the correct missing documents. The City had a chance to find and admit their error, but they did not. They did not challenge my documents then or in the courtroom, and the court found my documents credible. (Factual Finding 28(a) ). This showed that the City was continuing to act in bad faith.
- El Segundo failed to do the required reporting to CalPERS of hours over 1000 in any fiscal year. (Legal Conclusions 7(c) and CalPERS records). If they had done the required reporting, accurate time records would still be available, and CalPERS would have automatically begun my full pension when I retired over 5 years ago, so this hearing would not have been necessary.
- Even though Ms. Scott claimed to have presented all evidence available, the Judge said that she attached, *"only a fraction of Responder's timesheets, invoices, and contracts for the services he provided to the City"* (Factual Finding 28(b)).
- The City failed to report to CalPERS that they had given me 10 full years of vacation credit in

2007 for my time as a consultant, even though this would have still been in my employee file. The City wrote that this action was contrary to City Code which requires service to be in a P.E.R.S. or comparable agency. Yet, the Human Resources manager said "*City Manager Stewart is agreeable that the number of years you provided consulting services to [the City] be utilized in determining your new vacation accrual rate.*" (Factual Finding 5(a)). Another document shows that this vacation was full time for the entire 10 years in question. (Factual Finding 5(b)) This extraordinary action on the part of El Segundo demonstrated that management at the time, up to and including the City Manager, felt I worked closer to full time for the entire 10 years in question. It also shows they felt my time was comparable to time in CalPERS. These managers were working for the City during much of my consulting time.

- El Segundo claimed to have provided all documents pertaining to this case. However they neglected to provide a copy of a contract that was key to my case. This document was found on the City's public facing website. This document clearly established that I was required to work 3 days full days per week, which would qualify me for CalPERS membership. The Judge said: "*The existence of this contract in the City's possession and control is contrary to the City's September 4, 2014 assertions that it had "not been able to locate any documents regarding ... Progressive Solutions."* (Exhibit P)". (Factual Finding 26(b)).
- The formal declaration "*under penalty of perjury*" of El Segundo employee Jody Scott presented at the hearing stated that the documents she presented were "*maintained by the City in the ordinary course of business*". The Judge found that this statement was not true. (Factual Finding 28(c)). I believe that this unsolicited declaration was an attempt by Jody Scott to distance herself from the grossly faulty data.

So the City continued to be deceitful all the way to the hearing.

Our society requires that we be able to trust the word of the people we work with. It is especially true that we need to be able to trust the government entities that we deal with. El Segundo's obfuscation and untruths greatly prejudiced my case. I believe this was intentional, to avoid paying potentially hundreds of thousands of dollars in arrears payments. If I had not kept copies of these documents, El Segundo would have succeeded with this deception. As it is, they have caused me to work thousands of additional hours researching and organizing documents, and preparing a case for court. The next person in this situation may not fare so well if El Segundo is allowed to continue these unethical and potentially illegal practices.

This reprehensible behavior greatly hurts CalPERS, your Members, and the Public, and should not be tolerated from anyone or any organization. Please consider a formal censure of the City for this egregious behavior. Copies of the specific documents from the case should be available from CalPERS records or from CalPERS Senior Staff Attorney Preet Kaur, if needed.

Thank You for your consideration.

Sincerely,



Norman R. Thorn  
Respondent, CalPERS Member