

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
CalPERS Membership of:

MATTHEW L. FOSKETT,

Respondent,

and

CITY OF LODI,

Respondent.

Case No. 2015-0671

OAH No. 2016040656

PROPOSED DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter on December 15, 2016, in Sacramento, California.

Kevin Kreutz, Senior Staff Attorney, represented the California Public Employees' Retirement System (CalPERS).

Attorney Frances E. Rogers of the law firm Liebert Cassidy Whitmore, a Professional Law Corporation, represented respondent City of Lodi (City). Janice Magdich, City Attorney, also appeared on behalf of the City.

No one appeared for or on behalf of respondent Matthew L. Foskett, his default was entered, and this matter proceeded as a default proceeding pursuant to Government Code section 11520 as to Mr. Foskett only.

Evidence was received, and the record was left open for the parties to submit simultaneous closing briefs. The parties' closing briefs are marked as Exhibits 23 (CalPERS's) and U (City's). The record was closed, and the matter was submitted for decision on February 16, 2017.

CALIFORNIA PUBLIC EMPLOYEES
RETIREMENT SYSTEM

FILED *March 14* 2017

[Signature]

SUMMARY

The sole issue on appeal is the proper classification of Mr. Foskett's working relationship with the City while he provided services pursuant to a consulting agreement from July 1, 2012, through March 31, 2014. CalPERS determined he provided his services as an employee of the City. Applying the evidence introduced at hearing to the common law factors of employment supports that determination. Therefore, the City's appeal from CalPERS's determination that Mr. Foskett was an employee of the City from July 1, 2012, through March 31, 2014, should be denied.

FACTUAL FINDINGS

Procedural Background

1. On December 12, 2014, CalPERS sent the City a letter advising of its determination that Mr. Foskett provided services to the City from July 1, 2012, through March 31, 2014, as an employee. The City timely appealed CalPERS's determination. Renee Ostrander, Chief of CalPERS's Employer Account Management Division, signed the Statement of Issues on April 1, 2016, solely in her official capacity.

The City's Electric Utility Department

2. The City is one of the few cities in California that operates its own public utility to provide electricity to its businesses and residents. The City's electric utility department lacks the purchasing power to acquire electricity at reasonable prices on its own, and instead purchases electricity through the Northern California Power Agency (NCPA). The NCPA is a 15-member joint powers agency that provides its members with electrical energy purchasing, aggregation, scheduling, and management.

Mr. Foskett's Work History with the City

3. Mr. Foskett was hired by the City as a Principal Resource Planner in its electric utility department on November 15, 2010. His immediate supervisor was one of the assistant directors of the utility department. Mr. Foskett's supervisor reported to Elizabeth Kirkley, the City's electric utility director.

4. Within a few months of Mr. Foskett starting his job, the electric utility department underwent reorganization, his supervisor retired, the position from which the supervisor retired was eliminated and replaced with the newly created Rates & Resources Manager position, and Mr. Foskett was promoted to the new position. Mr. Foskett reported directly to Ms. Kirkley in his new position.

5. Ms. Kirkley explained at hearing that the Rates & Resources Manager position required the incumbent to be a “subject matter expert” in power supply, the contracts associated with power supply, and the federal and state laws and regulations pertaining to power supply. It also required expertise in electric utility rate levels and ratemaking. She knew Mr. Foskett had worked for the NCPA in the past, and he was the only City employee with the requisite expertise. Therefore, he was offered the position.

6. Mr. Foskett retired for service from the City as its Rates & Resources Manager, effective the close of business on August 21, 2011. The following day, he returned to the City as a “retired annuitant,”¹ and continued working as the Rates & Resources Manager on a part-time basis.

7. Ms. Kirkley explained Mr. Foskett did not provide sufficient advance notice of his retirement to find his replacement prior to his departure, and she was concerned about losing his subject matter expertise. She spoke with other members of the NCPA to determine if any were aware of other consultants with the same depth of knowledge about electric power supply as Mr. Foskett, and none were. Therefore, Ms. Kirkley asked Mr. Foskett to continue working for the department after retirement, and he agreed to do so.

8. The City’s human resources department provided Ms. Kirkley information about the maximum number of hours Mr. Foskett could work as a retired annuitant. Towards the end of the 2011/2012 fiscal year,² Ms. Kirkley became aware Mr. Foskett was approaching the maximum number of hours and was concerned “because we needed that skill set until we could fill that position on a permanent basis that would give us the ability to continue to function to serve the community as an electric utility.” It was Ms. Kirkley’s understanding that retirees who worked as consultants were not subject to the same limitations on the number of hours worked as retired annuitants. Therefore, she approached Mr. Foskett about the possibility of him continuing to work for the City as a consultant until she filled his position, and he was amenable to the idea.

9. In preparation for his working for the City’s electric utility department as a consultant, Mr. Foskett formed Matt Foskett Consulting LLC, a limited liability company through which he intended to provide his consulting services, on May 7, 2012. He was the sole member and manager of the organization. The Statement of Information he filed with the Secretary of State identified the nature of his business as “Electric Utility Consulting.”

¹ As previously mentioned, the nature of Mr. Foskett and the City’s relationship between July 1, 2012, and March 31, 2014, is the sole issue on appeal. Therefore, no factual finding is made that Mr. Foskett did in fact qualify as a retired annuitant under the Public Employees’ Retirement Law.

² The fiscal year begins on July 1 and ends on June 30 the following calendar year.

10. On June 6, 2012, the Lodi City Council passed a resolution authorizing the City Manager to enter into a consulting agreement with Matt Foskett LLC to provide “consulting services for planning, evaluation, acquisition, and operation of bulk power supplies and delivery resources as well as the development of electric utility rates.” The resolution limited the amount payable under the contract to “an amount not to exceed \$120,000.”

11. The consulting agreement between the City and Matt Foskett Consulting LLC was for a one-year period beginning July 1, 2012, and ending June 30, 2013,³ and contained the following relevant provisions:

1. SCOPE OF SERVICES:

City hereby agrees to contract with Consultant to perform tasks for the City of Lodi at the direction of the Electric Utility Department Director associated with the planning, evaluation, acquisition and operation of bulk power supplies and delivery resources as well as the development of electric rate schedules. The scope of services to be performed by Consultant is more fully set forth in Exhibit A, attached hereto and incorporated by this reference.

[¶] . . . [¶]

3.1. METHOD OF PAYMENT:

Consultant shall submit invoices for completed work on a monthly basis, or as otherwise agreed, providing, without limitation, details as to the amount of hours, individual performing said work, hourly rate, and indicating to what aspect of the Scope of Services said work is attributable. Consultant’s compensation for all work under this Agreement shall not exceed the amount of the Fee Schedule (Exhibit B).

³ There was a discrepancy in the evidence over whether there was a break in service between the time Mr. Foskett stopped working as a part-time employee and when he began working under the consulting agreement. On the one hand, the City’s response to CalPERS’s Employment Relationship Questionnaire indicates he stopped working as a part-time employee on June 10, 2012, and began working under the agreement on July 1, 2012. On the other hand, Ms. Kirkley testified there was no break in service after Mr. Foskett left the City as a part-time employee and before he returned as a consultant. Ultimately, the resolution of this discrepancy is not outcome determinative because any break in service would have been for less than three weeks.

[¶] . . . [¶]

5. CONSULTANT IS NOT AN EMPLOYEE OF CITY:

Consultant agrees that in undertaking the duties to be performed under this Agreement, it shall act as an independent contractor for and on behalf of City and not an employee of City. City shall not direct the work and means for accomplishment of the services and work to be performed hereunder. City, however, retains the right to require that work performed by Consultant meet specific standards without regard to the manner and means of accomplishment thereof.

[¶] . . . [¶]

7. TERMINATION:

(a) Termination by Consultant – In the event Consultant terminates this Agreement, he shall give City at least twenty-one (21) days advance written notice and shall be entitled to all choose one say that compensation.

(b) Termination by City – The City Manager may terminate this Agreement at any time, with or without cause. Twenty-four (24) hours Notice of Termination shall be provided to Consultant in writing.

Upon termination, consultant shall immediately suspend all work on behalf of City and deliver any documents or work in progress to City. However, City shall assume no liability for costs, expenses or lost profits resulting from services not completed or for contracts entered into by Consultant with third parties in reliance upon this Agreement.

(Bold original.)

12. The City began recruiting a full-time Rates & Resources Manager to replace Mr. Foskett on December 11, 2012. The duty statement for that recruitment identified the annual salary range for the position as \$98,724.36 to \$120,000. It defined the position as follows:

Perform skilled work in the areas of planning, evaluation, acquisition and operation of bulk power supplies and delivery resources; develops electric rate schedules, participates in the budget process and does related work as required.

13. No qualified applicants applied for the position during the recruitment period, which ended January 16, 2013. Therefore, Ms. Kirkley sought and obtained approval from the City Manager to increase the annual salary range for the position to \$113,532.96 to \$138,000. A continuous recruitment period was opened on February 25, 2013.

14. On May 15, 2013, the Lodi City Council passed a resolution authorizing the City Manager to extend the consulting agreement between the City and Matt Foskett Consulting LLC "until the EU Rates and Resources Manager was hired." In no event was the contract to extend beyond December 31, 2013. "All other terms and conditions, including compensation paid to Consultant, [remained] as set forth in the Agreement for Consulting Services."

15. Ms. Kirkley hired Melissa Price as the electric utility department's Rates & Resources Manager in September 2013. Ms. Price did not have any prior electric utility experience, and Mr. Foskett was the only person with sufficient knowledge to train her on those matters. Therefore, it was necessary to further extend his consulting agreement.

16. On December 18, 2013, the Lodi City Council passed a resolution authorizing the City Manager to execute an amendment to the consulting agreement with Matt Foskett Consulting LLC. The amended agreement was "for the period required to complete the scope of services as set forth in the Agreement for Consulting Services, but in no event will the term extend beyond March 31, 2014." The scope of work was described as follows:

Matt Foskett Consulting LLC will provide assistance to the Client for training purposes in the areas of load forecasting, power resource portfolio planning, procurement & transmission, related compliance requirements, and cost of service, rate design & evaluation.

There were no further extensions or amendments to the consulting agreement between the City and Matt Foskett Consulting LLC, and Mr. Foskett stopped working for the City on March 31, 2014.

Mr. Foskett's Working Conditions with the City

17. There was not a substantial difference in Mr. Foskett's job duties during the period of time the parties agree he was an employee of the City (November 15, 2010, through June 10, 2012). Those duties included representing the City during negotiations for the acquisition of power supply from the NCPA, supervising a rate analyst, making recommendations with regard to the power supply portion of the electric utility department's

budget, and activities relating to the City's grid interconnection with the transmission system. After Mr. Foskett successfully negotiated the acquisition of power supply from the NCPA, he reported the outcome of his negotiations to Ms. Kirkley, and subsequently accompanied her before the Lodi City Council's risk oversight committee to recommend approval of an agreement to purchase power supply on the terms negotiated.

18. Mr. Foskett no longer represented the City before the NCPA when he continued working under the consulting agreement, and those duties were fulfilled by Ms. Kirkley. However, she lacked "the expertise, so [she] needed to discuss various power acquisitions with him to make sure that the City was entering into an appropriate contract or was entering into an appropriate project." He also did not participate in the electric utility department's budget process, attend Ms. Kirkley's division head meetings on a regular basis, or supervise staff as a consultant. Furthermore, he was no longer subject to the City's standard work schedule, but was able to work whenever he wanted.

19. But as a consultant, Mr. Foskett made recommendations to Ms. Kirkley in terms of the type of power supply to purchase, whether the power supply he recommended complied with federal and state laws and regulations, and whether it was being offered at an appropriate price for the current market conditions because Ms. Kirkley relied on his "subject matter expertise." Additionally, he provided her with the technical information about the City's power supply she used to develop her department's annual budget. And while he had a more flexible work schedule than before, he was still expected to perform his work in a timely manner, be available to Ms. Kirkley when she needed him, and attend meetings with her when requested.

20. There were also some changes in the manner in which Mr. Foskett performed his duties as a consultant. For example, he no longer had an assigned office, but used a vacant office whenever it was necessary for him to be at the electric utility department. He used his own computer, paper, and writing utensils. However, he still had his security badge, which allowed him access to the department. There was no substantive change in the manner in which Ms. Kirkley supervised his work as a consultant, because she does not "micromanage" her employees and "expect[s] them to perform the duties of their job in a professional and timely manner and expect[s] them to report to[her] on any changes or things [she] should be aware of."

Discussion

Nature of Mr. Foskett's relationship with the City while working under the consulting agreement

21. CalPERS uses the common law test of employment to determine whether a person who performed services for a contracting agency did so as an "employee" or an "independent contractor" of the agency. (*Metropolitan Water District of Southern California v. Superior Court* (2004) 32 Cal.4th 491 [applying the common law factors of employment to determine contracting agency incorrectly classified workers as independent contractors and

improperly denied them CalPERS's membership].) The California Supreme Court explained in *Empire Star Mines Co. v. California Employment Commission* (1946) 28 Cal.2d 33: "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." (*Id.*, at p. 43; overruled on different grounds by *People v. Sims* (1982) 32 Cal.3d 468, 479, fn. 8 [collateral estoppel may apply to decisions made by administrative agencies]; superseded by statute on different grounds as stated in *People v. Preston* (1996) 43 Cal.App.4th 450, 458.) The right to terminate an employment agreement without cause carries "with it a certain amount of power to control conduct." (*Mission Insurance Company v. Workers' Compensation Appeals Board* (1981) 123 Cal.App.3d 211, 222.)

But the analysis also requires consideration of the following factors: 1) whether the person providing the services is engaged in a distinct occupation or business; 2) whether the services provided are generally performed under someone else's supervision; 3) the amount of skill required to perform the services; 4) which party provides the instrumentalities, tools, and place of work; 5) the duration for which the services are to be provided; 6) whether compensation is based on the amount of time spent or by the job; 7) whether the services provided are normally part of the principal's regular business; and 8) the parties' subjective intent regarding the nature of their relationship. (*Tieberg v. Unemployment Insurance Appeals Board* (1970) 2 Cal.3d 943, 946 [concluding trial court erred in not considering other factors of common law employment besides the right of control]; *Empire Star Mines Co. v. California Employment Commission*, *supra*, 28 Cal.2d 33 at pp. 43-44.)

22. The persuasive evidence established the City had the right to control the manner and means in which Mr. Foskett performed his services under the consulting agreement. The description of the scope of services in the agreement is nearly identical to the definition of the Rates & Resources Manager position provided in the City's duty statement. Additionally, the persuasive evidence established his job duties remained virtually the same both before and after the agreement. The maximum amount payable under the agreement (\$120,000) was equal to Mr. Foskett's maximum annual salary when he was the City's Rates & Resources Manager at the time. He was paid under the consulting agreement pursuant to invoices submitted each month, as opposed to upon the completion of a particular task. Christina Rollins, the Manager of CalPERS's Membership Analysis and Design Unit and Working After Retirement Unit, explained the fact that a person performs the same duties before and after retirement is "strong evidence" of the continuation of his employment relationship.

23. While there was evidence of some changes in the nature of Mr. Foskett's job duties after he began working under the consulting agreement, such changes did not alter the underlying purpose of his work – to use his "subject matter expertise in public power supply acquisition and the pricing of those" to help the City obtain the power supply necessary to serve its businesses and residents at the most economical rate possible. The consistency of this goal both before and after the consulting agreement was compelling evidence of the City's ability to control the manner and means in which Mr. Foskett performed his job

duties. His having a more flexible work schedule under the consulting agreement did not interfere with his ability to achieve that goal because he was expected to work as much as was necessary to complete his assignments. There was no evidence his not having an assigned office or having to use his own supplies interfered with his ability to accomplish his goal either.

24. Consideration of the other common law factors provides further evidence of the City's right to control. Ms. Kirkley repeatedly testified about the extent of Mr. Foskett's subject matter expertise, her concerns over losing that expertise, and there being no one else qualified to take his place prior to her hiring his replacement. She asked him to continue working as a consultant until his replacement was hired based on her understanding consultants were not subject to the same limitations on the numbers of hours worked as retired annuitants. The initial consulting agreement was for only a one-year term, was extended for an additional six months because the City's initial recruitment for Mr. Foskett's replacement was unsuccessful, and was extended one last time for three more months to allow him to sufficiently train his replacement, Melissa Price. This was persuasive evidence Mr. Foskett provided services which were normally part of the City's "regular business."

25. Mr. Foskett opined in the Employment Relationship Questionnaire sent to him by CalPERS that he was not an employee of the City while performing under the consulting agreement, and Ms. Kirkley opined the same in the questionnaire sent to the City. Additionally, the consulting agreement expressly provides Mr. Foskett was providing his services as an independent contractor.

But the more persuasive evidence of Ms. Kirkley's intent when drafting the agreement was her testimony that she was not concerned with that language in the agreement when she drafted it. She explained,

My intent at the time of drafting the page that had the Scope of Services was to ensure that the subject matter expertise I needed from Mr. Foskett was going to be provided to the City, because I had no other personnel that can provide that subject matter expertise.

[¶] . . . [¶]

It was to get that subject matter expertise the City needed to function.

26. The fact that the consulting agreement was between the City and Mr. Foskett's electric utility consulting business was not persuasive evidence of the City's lack of control. Mr. Foskett formed the limited liability company for the purpose of entering into the consulting agreement, he was the sole member and manager of the limited liability company, and there was no evidence he provided consulting services to anyone other than the City. Consideration of the second (services generally performed under someone else's supervision)

and third (amount of skill required) common law factors do not result in a different conclusion because Mr. Foscett performed substantially the same duties before and after the consulting agreement.

Laches

27. The City failed to introduce evidence of CalPERS's knowledge Mr. Foscett was being improperly characterized as an independent contractor of the City from July 1, 2012, through March 31, 2014. Therefore, the City failed to establish CalPERS acquiesced to the mischaracterization of Mr. Foscett and the City's relationship.

28. . It was undisputed the City did not send Mr. Foscett's consulting agreement to CalPERS for review to ensure "it will not constitute a reinstatement of employment or compromise Mr. Foscett's CalPERS retirement benefits" until August 2, 2012. It was further undisputed the City waited to seek CalPERS's review of the consulting agreement until nearly two months after the agreement was fully executed and Mr. Foscett was already providing services pursuant to it. The City failed to introduce any evidence it was prejudiced by CalPERS's delay in responding to the August 2, 2012 correspondence, regardless of whether the delay was unreasonable.

Summary

29. For the reasons explained further in the Legal Conclusions below, the City failed to meet its burden of establishing CalPERS erred in determining Mr. Foscett was an employee of the City from July 1, 2012, through March 31, 2014. It further failed to establish CalPERS is barred by the doctrine of laches from characterizing Mr. Foscett as an employee. Therefore, the City's appeal from CalPERS's determination that Mr. Foscett was an employee of the City between July 1, 2012, and March 31, 2014, should be denied.

LEGAL CONCLUSIONS

Applicable Burden/Standard of Proof

1. The City bears the burden of proving CalPERS improperly characterized Mr. Foscett as an employee of the City from July 1, 2012, through March 31, 2014. (Evid. Code, § 500 ["Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to his claim of relief or defense that he is asserting".]) The City also bears the burden of proving each of the elements of the affirmative defense of laches. (*Green v. Board of Dental Examiners* (1996) 47 Cal.App.4th 786, 793 [party asserting the affirmative defense of laches bears the burden of proof].) The standard of proof applicable to both issues is the preponderance of the evidence standard. (Evid. Code, § 115 ["Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence".]) Evidence that is deemed to preponderate must amount to "substantial evidence." (*Weiser v. Board of Retirement* (1984) 152 Cal.App.3d

775, 783.) And to be “substantial,” evidence must be reasonable in nature, credible, and solid value. (*In re Teed's Estate* (1952) 112 Cal.App.2d 638, 644.)

CalPERS Membership

2. “A CalPERS ‘member’ . . . is an ‘employee who has qualified for membership in this system and on whose behalf an employer has become obligated to pay contributions.’” (*Metropolitan Water District of Southern California v. Superior Court* (2004) 32 Cal.4th 491, 499; quoting, Gov. Code, § 20370, subd. (a).) A “local miscellaneous member” of CalPERS is an employee of a public agency who has contracted with CalPERS’s Board of Administration to provide pension benefits to its employees, except “local safety members.” (Gov. Code, § 20383.)

It was undisputed the City contracted with CalPERS’s Board of Administration to provide pension benefits to the City’s employees at all times relevant.

3. Membership in CalPERS is compulsory for all eligible employees, and “an employee of a contracting agency on the effective date of its contract with the board becomes a member immediately.” (Gov. Code, § 20281.) “Independent contractors who are not employees” are expressly excluded from CalPERS membership. (Gov. Code, § 20300, subd. (b).) “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.” (Gov. Code, § 20125.)

4. With regard to contracting agencies, an “employee” is “any person in the employ of [the] contracting agency.” (Gov. Code, § 20028, subd. (b).) “An independent contractor is one who renders service in the course of an independent employment or occupation, following his employer’s desires only as to the results of the work, and not as to the means whereby it is to be accomplished.” (*McDonald v. Shell Oil Co.* (1955) 44 Cal.2d 785, 788.) An agreement describing one party as being an independent contractor of the other, while strong evidence of the nature of the relationship, “is not conclusive.” (*Tieberg v. Unemployment Insurance Appeals Board* (1970) 2 Cal.3d 943, 952.)

5. If the entity who hired the worker has the right to exercise *complete* control over the means and manner in which the result for which the person was hired is accomplished, then an employment relationship has been established as a matter of law. (*Wickham v. The Southland Corporation* (1985) 168 Cal.App.3d 49, 58.) “Otherwise the right to control was an important factor to be taken into consideration along with the seven other factors enumerated.” (*Wickham v. The Southland Corporation, supra*, 168 Cal.App.3d at p. 58.) But those factors “cannot be applied mechanically as separate tests; they are intertwined, and their weight depends often on particular combinations.” (*S.G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, 350-351; quoting, *Germann v. Workers' Compensation Appeals Board* (1981) 123 Cal.App.3d 776, 783.)

6. When the nature of Mr. Foskett's relationship with the City between July 1, 2012, and March 31, 2014, is analyzed using the common law test of employment, the persuasive evidence established he was an "employee" as defined by Government Code section 20028, subdivision (b), for the reasons discussed in Factual Findings 21 through 26.

Affirmative Defense of Laches

7. The elements of laches are unreasonable delay and either acquiescence to the act about which the party asserting laches complains or prejudice to that party caused by the delay. (*City of Oakland v. Oakland Police and Fire Retirement System* (2014) 224 Cal.App.4th 210, 248.) To establish acquiescence, "it should clearly appear that [the party subject to laches] either had actual knowledge of the facts or failed to acquire such knowledge after having notice thereof." (*McNulty v. Lloyd* (1957) 149 Cal.App.2d 7, 10-11.) A party has been prejudiced by an unreasonable delay when it "has changed [its] position in a way that would not have occurred if the plaintiff had not delayed." (*Magic Kitchen LLC v. Good Things International Ltd.* (2007) 193 Cal.App.4th 1194, 1162; quoting, *Hot Wax Inc. v. Turtle Wax, Inc.* (7th Cir.1999) 191 F.3d 813, 824.)

8. As explained in Factual Finding 27, the City introduced no evidence of CalPERS's acquiescence to the mischaracterization of its relationship with Mr. Foskett from July 1, 2012, through March 31, 2014. Furthermore, the City was not prejudiced by CalPERS's delay in responding to the City's August 2, 2012 correspondence as explained in Factual Finding 28. Therefore, the City's affirmative defense of laches fails.

Conclusion

9. The persuasive evidence established Mr. Foskett was an employee of the City from July 1, 2012, through March 31, 2014. The City did not prove the affirmative defense of laches. Therefore, the City's appeal from CalPERS's determination that Mr. Foskett was the City's employee from July 1, 2012, through March 31, 2014, should be denied.

ORDER

The City of Lodi's appeal from CalPERS's determination that Matthew L. Foskett was an employee of the City from July 1, 2012, through March 31, 2014, is DENIED.

DATED: March 10, 2017

DocuSigned by:
Coren D. Wong
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COREN D. WONG
Administrative Law Judge
Office of Administrative Hearings