ATTACHMENT C

RESPONDENT'S ARGUMENT REGARDING THE PETITION FOR RECONSIDERATION
March 31, 2021

CalPERS Board of Retirement
CalPERS Executive Office
P.O. Box 942701
Sacramento, CA 94229-2701
Attn: Cheree Swedensky, Assistant to the Board

Subject: Respondent’s Argument Regarding Petition for Reconsideration
Lyn C. H. Krieger, April 20, 2021
OAH No. 2020060832

Members of the Board of Retirement:

Before you decide how you will vote today on my Petition for Reconsideration, I respectfully ask that you read the Petition that I submitted for your review.

I request that you grant my Petition and direct reconsideration of the Proposed Decision issued by the Administrative Law Judge (ALJ) on December 22, 2020.

I retired in March 2018 after nearly 30 years of combined public service. My appeal was filed in September 2019 based on an un-noticed and unexplained reduction in my reciprocal retirement benefits. The benefits did not conform to the agreement I signed with CalPERS in 1997, nor with publications issued by CalPERS at that time and for many years after, and was not consistent with law and regulations in place since 1957, reaffirmed by the Legislature in 2016. Most egregious, this benefit reduction was applied to only three Ventura County reciprocal retirees from 2017 through early 2019 out of the many reciprocal retirees from Ventura County during that time period.

My claim focuses on the unwarranted changes in policy and practice undertaken by CalPERS in direct opposition to 60 years of past practice and the law regarding reciprocal retirements. The abrupt change without notice or due process is wrong in the law, and results in wrongful treatment of employees who were granted reciprocity and assured in writing about the settled rules regarding calculation of their retirement benefit. Further, CalPERS actions upends the Legislature’s specific goal in creating reciprocity in 1956 – “to create a career public service,” where public employees may move between retirement systems without fear of benefit loss. This desire of the Legislature has been often repeated, most recently in AB 2375, adopted in 2016.

Failure to reconsider your Decision means that your longtime practice based on California Law and promises made in writing to reciprocal members for decades is permanently changed on a retroactive basis. In fact, the ALJ Proposed Decision in my case is based in part on a problematic Precedential Decision adopted by this Board in February 2019, nearly a year after my retirement. In other words, my reduced benefits
were calculated in June 2018 based on a Decision not yet made. The change you have allowed has broad implications not only for retirees caught unawares, who have relied on CalPERS’ own promises, but for future hires by both State and County agencies.

Documentation for the positions in this letter is voluminous and available for review.

1. **My retirement met all requirements for reciprocity under California Law, and my reciprocity was specifically recognized by CalPERS in 1997.**

2. **When determining reciprocity in my case in 1997, CalPERS made promises about the calculation of future retirement benefits, promises supported in law.** The law on reciprocal retirements is clear. In the case where the employee works first for CalPERS, and last for a 1937 Act County, as I did, the retirement benefit is based on the “highest income earned under either system.” This fact was documented in a required CalPERS agreement, creating contract rights.

3. **Beginning sometime in 2017, CalPERS elected to follow the wrong law in calculating retirement benefits for some reciprocal employees.** In fact, the bulk of the law utilized in a few limited cases applies to state and school employees, not employees under County retirement systems.

4. In 2016-17 CalPERS was unsuccessful in an attempt to change California law regarding the calculation of retirement benefits for reciprocal employees. This effort failed, with the Legislature refusing to even hear the matter. Instead, in AB2375 (2016) the Legislature confirmed that the *final compensation at the last agency worked was to be used to calculate reciprocal retirement benefits*. Nonetheless, CalPERS moved ahead with changes in reciprocal benefit calculations.

5. **The Precedential Decision regarding reciprocal retirements adopted by your Board in February 2019 is flawed and may be ultra vires.** Even if the Decision were not ultra vires, it was adopted by this Board in February 2019, nearly one year after my retirement from Ventura Count. This Decision changed CalPERS’ policy regarding calculation of reciprocal retirements, confirming a practice actually begun in 2017, and applied even now to only some reciprocal retirees. A previous Administrative Law Judge who reviewed a nearly identical consolidated case stated that CalPERS was wrong in its application of law.

6. This change in policy was not applied to all reciprocal retirees, but only selected employees, resulting in a targeting of employees that results in unequal, and illegal, treatment. Further, there is no evidence that the Board of Administration reviewed or approved this dramatic change in policy.
7. Even if CalPERS was correct in its application of law (PERL) regarding final compensation for reciprocal employees, in the hearing before the ALJ, I showed that the law your staff cited allowed inclusion of several of the income items that were errantly excluded in my case.

The ALJ assigned my case failed to address these issues.

Closing Comments

The result of the ALJ's Proposed Decision in this case and staff's errant and inconsistent calculations is a significant change in my retirement benefit – based upon a reduction of some $4,600 per month in final compensation. This after 30 years of service without notice. However, the long-term consequence is an up-ending of the Legislature's purpose in development of clear rules for reciprocity, a result that will discourage employees to switch public employers within California. This is a vital consideration for public agencies in California.

I ask that you grant my Petition for Reconsideration of my Appeal.

Lyn C. H. Krieger