

ATTACHMENT C

RESPONDENT ARGUMENT

BRITT W. WILSON



September 21, 2021

Cheree Swedensky, Assistant to the Board
CalPERS Executive Office
PO Box 942701
Sacramento, CA 94229-2701

Re: *Respondent's Argument* In the Matter of the Appeal Regarding Final Compensation Calculation of Britt W. Wilson (scheduled for November 17, 2021 Board Meeting)

Dear Ms. Swedensky:

Attached please find my *Respondent's Argument* in the above referenced matter.

If you have questions or need any additional information, please contact me at the above phone/email.

Thank you in advance for placing this on the Board Agenda for November 17, 2021.

Sincerely,


Britt W. Wilson

Respondent's Argument (submitted by Britt W. Wilson)

In the Matter of the Appeal Regarding Final Compensation Calculation of Britt W. Wilson (scheduled for November 17, 2021 CalPERS Board Meeting)

I began employment with the City of Rancho Mirage in January 2011 as a Management Analyst in the City Manager's Office. Through the years my job duties changed but my title remained the same. Eventually, I was transferred to the Administrative Services Department. Several times during that time period, I was operating "out of class" meaning I was doing work of a higher job/position. At one time, through the employees' union, I filed an out of class case with the City. The City had the option of promoting me/paying me more or taking the higher duties away. The City chose to take away the higher level duties and NOT pay me for backpay for those increased duties.

In the summer of 2018 (June), there was major reshuffling in the employee ranks of the City. At that time, I was transferred from the Administrative Services Department to the Finance Department as a Management Analyst. At that time, my duties increased and I was, once again, operating out of class.

In early February 2019, I met with the City Manager and requested a promotion. The City Manager granted the promotion from Management Analyst at \$45.48/hour to Senior Management Analyst at \$50.6462/hour. The promotion granted to me was based on my performing Senior Management Analyst duties. It was documented with a Personnel Action Form dated February 4, 2019. The promotion pay raise was granted retroactive to June 2018 – coinciding with my transfer to the Finance Department and my assumption of higher-level duties. A few weeks later after weighing all my options, I decided to retire. The City had me sign a retirement agreement, which I considered and executed on February 28, 2019 – 24 days after being granted my promotion, and I was placed on Administrative Leave for the next 4 months (i.e. from February 28, 2019 to my official retirement date of June 23, 2019). (Note: Because of my history of out of class and backpay claims, and rumblings by several "older" employees in the City, including myself, about age discrimination, it is obvious to me that the City had me sign the agreement so I could not sue them for back pay going back several years or charging age discrimination. I also believe that due to the short time span between my promotion (February 4) and the signaling of my intent to retire (February 28), the City just combined my pay raise and the promise not to sue into one document. I look at the promotion/pay language in the agreement was really just a "whereas" type statement in the document, providing history of what was occurring.

I retired in June 2019 but eventually CalPERS declined my promotion and did a claw-back on some of my pension pay and cut my pension back to my Management Analyst salary of \$45.48/hour, not the promotion rate of \$50.6462. I paid the CalPERS clawback of \$7,180.99 in September 2020. I appealed the CalPERS decision and ultimately, my appeal went to a judge in the Office of Administrative Hearings in July 2021. The judge declined my appeal.

CalPERS is completely ignoring the promotion/pay raise granted me in February 2019 (and so is the Office of Administrative Hearing Judge). Even though it is documented

with the Personnel Action Form, a signed declaration statement by the City, and verbal witness testimony by Kofi Antobam (City of Rancho Mirage Human Resources Director) in the appeal before the Administrative Hearing judge. The Personnel Action Form, signed declaration statement, and verbal testimony supporting my case were all accepted as evidence at the hearing. How can CalPERS just ignore those things and rely ONLY on the Retirement Agreement?

CalPERS not only ignores those events/documents, but they seem to also challenge the promotion pay I received in relation to approved Salary Schedules of the City. I am unclear of what they are claiming as my promotion and pay was based on the 2019 pay schedules. In fact, CalPERS legal counsel actually had those salary schedules introduced as evidence. The pay for a Senior Management Analyst is shown as \$50,642 on the schedules which exactly matches the new pay for me shown on my Personnel Action Form. Now if CalPERS is somehow arguing that the salary schedules are not relevant/correct, they have the ability to – in effect – determine what my pay should have been. Again, this was information submitted as evidence by CalPERS legal counsel and attested to by CalPERS witness Kevin Lau. State law (Section 570.5 (8) (b)) provides:

“...the Board, in its sole discretion, may determine an amount that will be considered to be payrate....”

A reasonable and prudent man would think that the City is/was in the best position to determine the payrate for a particular job but perhaps CalPERS is well-versed in Rancho Mirage job descriptions, employee duties, etc. My point is that if CalPERS doesn't like the salary schedule the City used to determine my new pay, it can set a payrate. Again, this was discussed in detail during the administrative hearing and Mr. Lau agreed that CalPERS can set payrates where there is an issue. I believe my payrate should be based on the City's Salary Schedule, but I would consider CalPERS determining my salary.

It is worth noting that during my lengthy appeal process, the City argued that I was performing Senior Management Analyst duties and that is why I was promoted to the higher pay. Written proof of those assertions by the City were in the form of emails between the City's Human Resources Director (Kofi Antobam) and CalPERS staff. In fact, they were submitted as evidence by CalPERS legal counsel. So, I don't see how CalPERS can tell the City at what pay level I was operating at.

The judge also relied on the false/confused narrative regarding salary schedule, and it was essentially the deciding factor for her to not grant my appeal. The judge also reported that because I was put on administrative leave for the last 4 months of my promotion period, that I was NOT performing the higher level duties and attendant pay. CalPERS staff has also argued that Administrative Leave cannot be counted towards retirement. However, the judge's comment begs the question – “O.K. so because I was on Administrative Leave, I wasn't doing the higher level duties, but what about BEFORE the administrative time started?” In other words, the judge tries to have it both ways – she, and CalPERS staff, are ignoring that I was performing duties at the Senior Management Analyst Level from June 2018 (when I moved to Finance Department) until February 28, 2019, when I decided I was going to retire. I was also legitimately given a promotion for

that time period. If CalPERS Board determines that I cannot earn the higher salary for the Administrative Leave time period, surely, with all the written and verbal testimony under penalty of perjury, they can agree that I am entitled to the higher pay for the 8 month time period leading up to February 28, 2019.

The judge also cites my statements that I "was given a promotion and then retired." That is absolutely correct, but she assumed that the two events happened at the same time – they DID NOT. They were separated by weeks as evidenced by the date of the Personnel Action Form (February 4) and the Retirement Agreement (February 28). Again, this statement by me that she cites appears to be a major deciding factor for her but it is based on FALSE assumption on her part. Again, time and space separation between my promotion and my intent to retire by signing the Retirement Agreement. She acts like it took place in the same conversation. Elsewhere in her ruling she cites testimony by Mr. Antobam wherein he states that after the promotion was granted "Two weeks later Mr. Wilson informed the city that he planned to retire in June 2019." Again proof of separation of the promotion and intent to retire.

I am attaching the following documents to support my case:

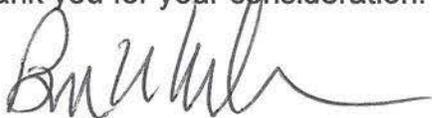
1. Personnel Action Form dated February 4, 2019 (note: that is 24 days before I signaled my intent to retire on February 28, 2019 by signing a Retirement Agreement).
2. Sworn Declaration by Kofi Antobam regarding my promotion and that it was separate from my promotion (attested to under penalty of perjury)
3. 2019 Salary Schedule (note pay for Senior Management Analyst matches pay listed on my Personnel Action Form).

In summation, I am asking the CalPERS Board to validate my promotion and payraise (for at least the time period from June 2018 to February 28, 2019), but hopefully for all the time period (from June 2018 to June 2019). It is very important to highlight a point the administrative judge brought up in her ruling:

"Pension litigation should be liberally construed and all ambiguities should be resolved in favor of the pensioner."

In that light, and in justice and fairness, I ask that the CalPERS Board find in my favor and restore my pension and reimburse me for the PERS clawback that I was required to pay. I worked hard for this promotion with many trials and tribulations with the City and to have this reduction of my pension and the imposition of the clawback is very devastating, unfair and unjust.

Thank you for your consideration.



Britt W. Wilson, Respondent

Date received in Finance: _____

Salary change processed on check dated: _____

CITY OF RANCHO MIRAGE



PERSONNEL ACTION FORM

EMPLOYEE NAME Britt Wilson

EMPLOYEE NO. 2113

TIME OFF/TIME EARNED REQUEST:

	No. of Hours	FROM: Date/Time	TO: Date/Time
Sick Leave	_____	_____	_____
Family Sick Leave	_____	_____	_____
Industrial Leave	_____	_____	_____
Vacation	_____	_____	_____
Floating Holiday	_____	_____	_____
Administrative Leave	_____	_____	_____
Comp Time Off	_____	_____	_____
Bereavement	_____	_____	_____
Jury Duty	_____	_____	_____
Overtime -- required	_____	_____	_____
Overtime -- not required	_____	_____	_____
Comp Time Earned - required	_____	_____	_____
Comp Time Earned - not required	_____	_____	_____
Other	_____	_____	_____

APPOINTMENTS/CHANGES/SEPARATIONS:

<input type="checkbox"/> Probation	Current	New
<input checked="" type="checkbox"/> Regular	Title <u>Management Analvst</u>	<u>Sr. Management Analyst</u>
<input type="checkbox"/> Temporary	Salary <u>36 G \$45.48</u>	<u>38 G \$50.6462</u>
<input type="checkbox"/> Part Time	Range Step Monthly Hourly	Range Step Monthly Hourly
<input type="checkbox"/> Full Time	Department <u>Administration Services</u>	<u>Finance</u>
<input type="checkbox"/> Step Increase	<u>June 18, 2018</u>	<u>Anniversary Date</u>
<input checked="" type="checkbox"/> Salary Change	Effective Pay Period Beginning Date _____	
<input checked="" type="checkbox"/> Promotion	Social Security No. _____	Date of Birth _____
<input type="checkbox"/> Transfer	Address / Phone / Comments _____	
<input type="checkbox"/> Title Change	<u>This promotion is retrospective to June 18, 2018.</u>	
<input type="checkbox"/> Address Changes	_____	
<input type="checkbox"/> Telephone Change	_____	
<input type="checkbox"/> Marital/	_____	
<input type="checkbox"/> Dependent Change	_____	
SEPARATION:	_____	
<input type="checkbox"/> Resignation	_____	
<input type="checkbox"/> Retirement	_____	
<input type="checkbox"/> Dismissal	_____	
<input type="checkbox"/> Layoff	_____	
<input type="checkbox"/> Suspension	_____	
<input type="checkbox"/> Other	_____	

NOTE DATE - 24 DAYS BEFORE RETIREMENT

REQUESTED BY:

Name _____
Signature _____ Date _____

APPROVED BY:

Supervisor	Date	City Manager	Date
<i>[Signature]</i>	<u>2-4-19</u>	<i>[Signature]</i>	<u>2-4-19</u>
Department Head	Date	Finance	Date

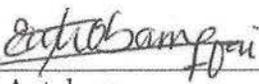
DECLARATION OF KOFI ANTOBAM

I, Kofi Antobam, declares as follows:

1. I am the Administrative Services Director of the City of Rancho Mirage. I have served in this role since August 20, 2018. I have personal knowledge of the following facts.
2. As the Administrative Services Director, my duties include, without limitation, overseeing the Administrative Services Department, managing the Human Resources Division, the Information Services Division, Benefits Administration, Risk Management, Contracts Administration, and the Finance Division.
3. In February 2019, the City decided to promote Britt Wilson to a Senior Management Analyst, effective June 18, 2018.
4. Approximately two weeks after the City decided to promote him, Mr. Wilson informed the City of his desire to retire in June 2019.
5. Based on Mr. Wilson's desire to retire, the City and Mr. Wilson entered into an agreement whereby the City would place Mr. Wilson on paid administrative leave until his desired retirement date in June 2019.
6. The City's decision to enter into the retirement agreement was independent of the City's decision to promote Mr. Wilson to Senior Management Analyst.

I declare under penalty of perjury under the law of the State of California that the foregoing is true and correct.

Date: June 14, 2021



Kofi Antobam

2019

**CITY OF RANCHO MIRAGE
HOURLY SALARY SCHEDULE**
Hired Between January 1, 2012 And July 26, 2013

RANGE	TITLE	A	B	C	D	E	F	G
20		17.2927	18.1574	19.0653	19.5419	20.0304	20.5312	21.0445
21	Library Clerk I	18.1574	19.0653	20.0185	20.5190	21.0320	21.5578	22.0968
22		19.0653	20.0185	21.0195	21.5449	22.0835	22.6357	23.2016
23	Records Technician I	20.0185	21.0195	22.0704	22.6222	23.1878	23.7675	24.3617
24	Office Assistant III Library Clerk II	21.0195	22.0704	23.1739	23.7534	24.3472	24.9559	25.5798
25	Building/Parks Maintenance Worker I Building Maintenance Worker/Custodian Street Maintenance Worker I	22.0704	23.1739	24.3326	24.9409	25.5645	26.2036	26.8587
26		23.1739	24.3326	25.5494	26.1881	26.8428	27.5138	28.2017
27	Accounting Technician II Street Maintenance Worker II Code Compliance Officer I	24.3326	25.5494	26.8268	27.4975	28.1850	28.8896	29.6119
28	Administrative Analyst Animal Control/Code Compliance Officer I Permit Technician Planning Technician	25.5494	26.8268	28.1682	28.8724	29.5941	30.3339	31.0923
29	Senior Accounting Technician Computer & Audio/Visual Technician Senior Building/Parks Maintenance Worker Program Coordinator	26.8268	28.1682	29.5766	30.3161	31.0740	31.8508	32.6470
30	Mobile Home/Code Inspector Code Compliance Officer II Building Inspector I	28.1682	29.5766	31.0554	31.8318	32.6275	33.4433	34.2794
31		29.5766	31.0554	32.6082	33.4233	34.2589	35.1155	35.9933
32	Accountant Assistant Planner Network & Computer Specialist Network & Support Specialist Building Inspector II Engineering Technician II Street Maintenance Supervisor Traffic Signal Technician II Building/Landscaping Maintenance Supervisor Librarian/Technology Librarian GIS Specialist	31.0554	32.6082	34.2386	35.0946	35.9720	36.8713	37.7930
33	Records Manager Records Management Coordinator Executive Coordinator Public Works Inspector Housing Specialist	32.6082	34.2386	35.9505	36.8492	37.7706	38.7148	39.6826
34	Senior Building Inspector Marketing & Events Specialist Senior Code Compliance Officer Senior Librarian Senior Traffic Signal Technician	34.2386	35.9505	37.7481	38.6918	39.6591	40.6506	41.6668
35	Human Resource Specialist Media & Communications Specialist	35.9505	37.7481	39.6355	40.6263	41.6420	42.6830	43.7501
36	Contracts Specialist Management Analyst Accounting Supervisor Associate Planner Project Manager Enterprise Specialist Principal Librarian Astronomer	37.7481	39.6355	41.6173	42.6578	43.7242	44.8173	45.9377
37		39.6355	41.6173	43.6982	44.7906	45.9104	47.0581	48.2346
38	Planner Senior Management Analyst	41.6173	43.6982	45.8831	47.0301	48.2059	49.4110	50.6462
39	Associate Civil Engineer	43.6982	45.8831	48.1772	49.3816	50.6163	51.8817	53.1786
40		45.8831	48.1772	50.5861	51.8508	53.1470	54.4757	55.8375