

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

DATE:	December 22, 2014	DEP. NO.:	24
JUDGE:	HON. SHELLEYANNE W. L. CHANG	CLERK:	E. HIGGINBOTHAM
JOSEPH TANNER, Petitioner, v. CALIFORNIA PUBLIC EMPLOYEES’ RETIREMENT SYSTEM (CalPERS); BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES’ RETIREMENT SYSTEM; and DOES 1 THROUGH 100, inclusive, Respondents.		Case No. 34-2013-80001492	
CITY OF VALLEJO, Real Party in Interest.			
Nature of Proceedings:		RULING ON SUBMITTED MATTER: PETITION FOR WRIT OF ADMINISTRATIVE MANDAMUS AND WRIT OF MANDATE	

The following is the Court's tentative ruling to the above-entitled matter set for hearing in Department 24 on Friday, December 12, 2014, at 1:30 p.m. The tentative ruling shall become the final ruling of the Court, unless a party wishing to be heard so advises the clerk of this Department no later than 4:00 p.m. on the court day preceding the hearing, and further advises the clerk that such party has notified the other side of its intention to appear.

If oral argument is requested, the parties shall notify the clerk, at the time of the request, what specific issues will be addressed at the hearing. Oral argument shall not exceed 20 minutes per side.

Petitioner, Joseph Tanner, petitions for a writ of administrative mandamus to set aside a decision (Decision) of Respondent California Public Employees’ Retirement System (CalPERS), which found that Petitioner’s unmodified annual retirement allowance was \$216,446. Petitioner claims that he is entitled to a retirement allowance based on a \$305,844 base salary, which includes items that Respondent determined to be non-pensionable. Petitioner also petitions for a writ of mandate directing CalPERS to set aside its Decision and follow the law.¹ The Petition is **DENIED.**

¹ The Petition challenges CalPERS’ administrative decision, which is the proper subject of a writ of administrative mandamus under Code of Civil Procedure section 1094.5. Because Petitioner’s “traditional” mandate claim in the Petition also seeks to set aside CalPERS’ decision on the basis that it allegedly did not follow the law, and because

I. BACKGROUND

The background facts are taken from the parties' briefs, relevant portions of the administrative record, and the administrative law judge's (ALJ) decision, adopted by CalPERS.

Petitioner is a retired member of CalPERS and made contributions thereto through his service with various governmental entities as City Manager for the City of Pacifica, Redevelopment Consultant for the City of Alameda, Assistant City Manager for the City of Alameda, City Manager of the City of Pleasant Hill, City Manager for the City of Emeryville, and City Manager for the City of Galt. (AR, 3596.)

Sometime prior to November 2006, while employed at the City of Pacifica, Petitioner was contacted by a recruiter regarding an opening for the position of City Manager with the City of Vallejo (Vallejo). (AR, 3597.) Petitioner informed the recruiter, Mr. William Avery, that he desired a substantially higher salary than what Vallejo was initially offering for the position—at least \$300,000 in “PERSable” or pensionable compensation eligible for CalPERS retirement benefits. (Id.; AR, 643) On November 6, 2006, the interim City Manager for Vallejo, John Thompson, communicated to the City Council that Petitioner requested total annual compensation of \$349,952, which included \$267,840 of pensionable compensation. (AR, 651-652, 2508-2510.) Petitioner wished to be initially hired as an “interim” City Manager for various reasons, including the fact that he wished to wait for a certain time period after retiring from the City of Pacifica, and because he was concerned about working for Vallejo. (AR, 3597-3598.)

At a November 14, 2006 closed session meeting, the City Council discussed Petitioner's proposed employment contract. On November 16, 2006, the City Council held another special meeting on November 16, 2006 and appointed Petitioner as City Manager. (AR, 3598-3599.)

In November 2006, Petitioner entered into an employment contract with Vallejo (November 2006 Contract). The 2006 Contract had a start date of January 8, 2007 and was for a three-year term. (AR 393, 404.) Under the November 2006 Contract, Petitioner would begin as a “limited term” City Manager, which would automatically convert to a “permanent employee” position two months into the three-year term, on March 8, 2007, when Petitioner would be “reinstated” in CalPERS. (AR, 393, 404.) His “base salary” was initially set at \$216,000. (AR 399.) However, the November 2006 Contract provided that Petitioner would receive other items of non-pensionable pay that would “convert” to “base salary” once his “limited term” period expired as well as a leave allowance and severance pay. (AR 399, 401.)

Petitioner retired from the City of Pacifica, effective January 8, 2007, with a “final compensation” base salary of \$170,216. He drew an annual retirement allowance from Pacifica of \$131,543 that year. (AR, 624, 379-381.) On January 8, 2007, he began working for Vallejo. (AR, 393.)

Petitioner does not again reference any separate causes of action in his memorandum of points and authorities (MPAs), the Court disposes of this petition pursuant to Code of Civil Procedure section 1094.5.

Vallejo Human Resources Manager Debra Boutte forwarded the November 2006 Contract to CalPERS. (AR, 3599.) On January 26, 2007, CalPERS employee Carlous Johnson mailed a response to Boutte. CalPERS' response detailed the provisions of the November 2006 Contract that conflicted with the Public Employees' Retirement Law (PERL). (AR, 409-411.) The letter stated that although Petitioner's initial salary of \$216,000 qualified as pensionable compensation, the items that would be automatically added or converted to base pay were not. (AR, 410.) These items included management leave credits, automobile allowance, and deferred compensation, and severance pay. Additionally, CalPERS' letter notified Boutte that if EMPC (employer-paid member contributions) and management incentive pay were intended to be pensionable, the contract provisions must be revised to comply with the pertinent regulations. (Id.) For example, as to EMPC pay, the City must adopt a resolution for a "group or class of employees" and amend the contract. (Id.) Finally, the letter informed Boutte that any severance pay which should be paid to Petitioner was not pensionable. (AR, 411.)

When shown CalPERS' letter, Petitioner told Vallejo staff to "fix it." (AR, 3601.)

On March 27, 2007, the Vallejo City Council approved Petitioner's new employment agreement, "entered into as of March 8, 2007," which "supercedes [sic] the November 18, 2006 Agreement" (March 2007 Contract). (AR, 458-471, 464.) Petitioner's base salary was changed from \$216,000 to \$305,844 annually, and the contract term was from March 8, 2007 to March 8, 2010. (AR, 464.) The March 2007 Contract omitted language relating to converting the car allowance, deferred compensation, and 30 days of management leave to base salary, along with the employees option to sell back 120 hours of accrued annual leave. (AR, 458-471.) The provision regarding 12 months' severance pay was amended to add that it is not reportable to CalPERS. (AR, 466.)

Petitioner resigned effective June 1, 2009. The City Council adopted a settlement agreement with Petitioner in which they paid him severance pay of \$390,000. (AR, 3607-3608.)

Petitioner submitted his application for retirement benefits on May 22, 2009. Petitioner reported his highest compensation paid as from June 1, 2007 to May 31, 2008 (\$305,842.) (AR, 3607-3608.) CalPERS denied Petitioner's reported final compensation and found that Petitioner's base salary was \$216,000. (AR, 3609, 3611.)

II. DISCUSSION

a. Request for Judicial Notice; Administrative Record

CalPERS' unopposed request for judicial notice is **GRANTED**.

The Court admonishes Petitioner for providing a copy of the administrative record that is unbound and extremely difficult to review. The administrative record is quite large, as the administrative hearing in this matter lasted 10 days. Despite this fact, Petitioner furnished the Court with an administrative record comprised of loose documents in folders, and an electronic copy with multiple PDF documents. In the future Petitioner should ensure that any

administrative record, and in particular, hearing transcripts, is bound and in a format that allows the Court to easily review it.

b. Standard of Review

This Court's task is to determine whether the Board abused its discretion. In this case, abuse of discretion "is established if the court determines that the findings are not supported by the weight of the evidence." (Code of Civ. Proc., § 1094.5(c); *Strumsky v. San Diego County Employees Ret. Assn* (1974) 11 Cal.3d 28, 44-45.) "In exercising its independent judgment, a trial court must afford a strong presumption of correctness concerning the administrative findings, and the party challenging the administrative decision bears the burden of convincing the court that the administrative findings are contrary to the weight of the evidence." (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 817.)

Further, to the extent the Court finds any ambiguity in the applicable provisions of the PERL or regulations governing CalPERS' administration thereof, under well-settled law the Court must give substantial deference to the Board's interpretations of those provisions. In *City of Pleasanton v. Board of Administration* (2012) 211 Cal.App.4th 522, the court explained that "where our review requires that we interpret the PERL or a PERS regulation, the court accords great weight to [CalPERS'] interpretation. [Citation.] This is in recognition of the fact that as the agency charged with administering PERL, [CalPERS] has expertise and technical knowledge as well as an 'intimate knowledge of the problems dealt with in the statute and the various administrative consequences arising from particular interpretations.'" (*Id.* at 539.)

c. Argument

CalPERS found that, by entering into the March 2007 Contract, Vallejo "rolled or converted five items into [Petitioner's] original base salary of \$216,000 in order to arrive at a new base salary of \$305,844." (AR, 3604-3605.) Accordingly, the approximate \$90,000 difference between these amounts was not pensionable. Having reviewed the record and applied its independent judgment, the Court concludes that CalPERS did not abuse its discretion in determining that only \$216,000 of Petitioner's salary was pensionable compensation.

i. CalPERS Did Not Abuse its Discretion in Determining that Specific Items were Excluded from Petitioner's Pensionable Compensation

As a preliminary matter, the Court discusses the governing background law that allows CalPERS to administer its retirement system and review its members' applications for retirement benefits.

1. Background Law

CalPERS is a "prefunded, defined benefit" retirement plan. (*Oden v. Board of Administration* (1994) 23 Cal.App.4th 194, 198.) Under the PERL, the determination of what benefits and items of pay constitute pensionable "compensation" is crucial to the computation of the employee's ultimate pension benefits. (*Molina v. Board of Administration* (2011) 200 Cal.App.4th 53, 64.)

The formula for determining a CalPERS' member's retirement benefit takes into account (1) years of service, (2) a percentage figure based on age at the date of retirement, and (3) "final compensation." (*City of Sacramento v. Public Employees Ret. Sys.* (1991) 221 Cal.App.4th 1470, 1479.)

The PERL specifically defines pensionable compensation. "**Compensation**" includes and shall not exceed "compensation earnable," which is defined as (1) **pay rate**, and **special compensation**. (Gov. Code, §§ 20630, 20636.)

The PERL further defines "**pay rate**" and "**special compensation**."

"**Payrate**' means the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules. 'Payrate,' for a member who is not in a group or class, means the monthly rate of pay or base pay of the member, paid in cash and pursuant to publicly available pay schedules, for services rendered on a full-time basis during normal working hours, subject to the limitations of paragraph (2) of subdivision (e)." (Gov. Code, § 20630, subd. (b)(1).)

"**Special Compensation**' includes a payment for special skills, knowledge, abilities, work assignment, holiday hours, or other work conditions. [¶] Special compensation shall be limited to that which is received by a member pursuant to a labor policy or agreement or as otherwise required by state or federal law, to similarly situated members of a group or class of employment that is in addition to payrate. If an individual is not part of a group or class, special compensation shall be limited to that which the [CalPERS] board determines is received by similarly situated members in the closest related group or class that is in addition to payrate...." (Gov. Code, § 20636, subd. (c)(1), (2).)

"Special compensation shall be for services rendered during normal working hours and, when reported to the [CalPERS] board, the employer shall identify the pay period in which the special compensation was earned. Special compensation does not include "final settlement pay,"² payments made for additional services rendered outside of normal working hours, or other payments that the [CalPERS] board has not affirmatively determined to be special compensation." (Gov. Code, § 20636, subd. (c)(3), (7).)

CalPERS regulations further define special compensation items that must be reported to CalPERS if those items are contained in a written labor policy or agreement. (2 Cal. Code Regs., § 571, subd. (a).) Among other things, these special compensation items must be: (1) available to all members in the group or class; (2) part of normally required duties; (3) performed during normal hours of employment; (4) paid periodically as earned; (5) historically consistent with prior payments for the job classification; (6) not paid exclusively in the final compensation period; (7) not final settlement pay; additionally, the items must (8) not create an unfunded liability over and above PERS' actuarial assumptions. (2 Cal. Code Regs., § 571, subd. (b).)

² "Final Settlement Pay" means any cash or conversions of employer benefits in excess of compensation earnable awarded to a member in connection with or anticipation of a separation from employment. (Gov. Code, § 20636, subd. (f); 2 Cal. Code Regs., § 570.)

Thus, the PERL and applicable regulations specifically define pensionable compensation, and its components, “pay rate” and “special compensation.”

ii. Petitioner Has Not Established that He is Entitled to the Claimed Benefits

In the administrative proceedings below, Petitioner, as the applicant for the entitlement, (here retirement benefits) had the burden of proof to establish a right to the entitlement, absent a statutory provision to the contrary. (*See Lindsay v. San Diego Ret. Bd* (1964) 231 Cal.App.2d 156, 161-162.) Petitioner challenges CalPERS’ determination that only \$216,446 of Petitioner’s \$305,844 salary was pensionable, or “compensation” for purposes of receiving CalPERS retirement benefits. CalPERS determined that Petitioner had not met his burden of proof in establishing that the entire \$305,844 salary was pensionable. Thus to show that CalPERS abused its discretion in making this finding, Petitioner must establish that the \$305,844 was his “pay rate,” or that the additional items were “special compensation” totaling \$305,844.

1. Petitioner’s Salary Does Not Appear on a Publicly Available Pay Schedule

First, Petitioner cannot legitimately claim that his salary of \$305,844 is “pay rate,” because Petitioner has not shown that this salary was on a publicly available “pay schedule.” (*See Prentice v. Board of Administration* (2007) 157 Cal.App.4th 983, 993-994.)

CalPERS argues that the only documents that list Petitioner’s salary at \$305,844 are the March 2007 Contract and the “May 8, 2007 documents relating to that contract,” and that these documents cannot be a “pay schedule” because they do not refer to Petitioner or list any other person or position. Further, CalPERS contends that there is no evidence that the City intended that these documents would serve as “pay schedules.” Additionally, CalPERS points to evidence that Petitioner’s salary was not the type that would have appeared on a “pay schedule,” and that the City did not feel obligated to “post” the City Manager’s salary on a “pay schedule.” (AR, 1798-1789, 2430.)

Petitioner responds in his Reply Brief that (1) his salary was publicly available, and (2) Ms. Boutte testified that a document relating to the “March 8, 2007 City Manager Salary Computation” was a pay schedule and was a type of document that the City would make publicly available as to the City Manager’s salary. (AR, 823, 1876-1877.) Thus, Petitioner contends that his salary appeared on a publicly available pay schedule. The Court is not persuaded.

The facts demonstrate that the City made an exceptional arrangement with Petitioner to provide him significant compensation. Indeed, this compensation was well above the salary paid to the last Vallejo City Manager (\$198,000). (AR, 552-557, 2143-2144.)

Further, the document cited by Petitioner as his “pay schedule” differs from the “pay schedules” for other groups or classifications of City employees.

The PERL definition of “payrate” requires that an employee’s salary appear on a publicly available “pay schedule” if the employee is similarly situated to other members of “the same group or class of employment” or if the member is *not* in a group or class. The documents cited by the parties show that Vallejo’s salary information for Petitioner markedly differed from the salary information for Department Heads and Executive Assistants (a group or class of employees). Here, Vallejo published salary range information for “Department Heads & Executive Assistants” on a yearly basis, e.g., from July 1, 2006-June 30, 2007, and July 1, 2007-June 30, 2008. (AR, 539-542.) In contrast, the “pay schedule” document cited by Petitioner is specific to him only, in that it is dated “March 8, 2007” and pertains only to the City Manager.

Petitioner’s broad interpretation of “pay schedule” would permit an agency to provide additional compensation to a particular high-ranking official, any time it made a document with his specific pay information “publicly available.” (*Prentice v. Board of Administration, supra*, 157 Cal.App.4th at p. 994.) The Court does not believe that the Legislature intended such a broad construction of “pay schedule.”

Accordingly, CalPERS was not obligated to consider the document cited by Petitioner to be a “publicly available pay schedule” and find that the entire \$305,844 salary was Petitioner’s “pay rate.” CalPERS did not abuse its discretion on this basis in finding that only \$216,446 of the \$305,844 was pensionable.

2. The Additional Items that Petitioner Seeks to Include are not “Special Compensation”

In claiming that entire amount of Petitioner’s \$305,844 salary is pensionable, Petitioner argues that CalPERS must consider as “compensation” certain items reflected in the November 2006 Contract, and “converted” to salary in the March 2007 Contract. This includes the automobile allowance, employer paid deferred compensation, 30-day leave allowance, and one percent of the employer cost of member contributions. These items—e.g., the difference between Petitioner’s \$305,844 “converted” salary, and the \$216,446, salary in the November 2006 Contract are not “special compensation” that is pensionable.

First, the value of these components of Petitioner’s pay is specifically excluded under the PERL. (Gov. Code, § 20636, subd. (g)(4)(E), (F), (H), (I).) Government Code section 20636, subdivision (g)(4) excludes from the definition of payrate and special compensation for state members³: “(E) Employer payments that are to be credited as employee contributions for benefits provided by this system, or employer payments that are to be credited to employee accounts in deferred compensation plans. The amounts deducted from a member’s wages for participation in a deferred compensation plan may not be considered to be ‘employer payments.’ (F) Payments for unused vacation, annual leave, personal leave, sick leave, or compensating time off, whether paid in lump sum or otherwise. (G) Final settlement pay. (H) Payments for overtime, including pay in lieu of vacation or holiday. (I) Compensation for additional services outside regular duties, such as standby pay, callback pay, court duty, allowance for automobiles,

³ The parties do not dispute that Petitioner is a “state member” and subject to this specific statute. (*See Molina v. Board of Administration* (2011) 200 Cal.App.4th 53 [applying Government Code section 20636 to former city employee].)

and bonuses for duties performed after the member's regular work shift." Accordingly, these items are not special compensation.

Petitioner appears to argue that these items fall within "management incentive pay," one of the categories of "special compensation." (2 Cal. Code Regs. § 571.) Allowing Petitioner to characterize these components as "management incentive pay" falling within "special compensation" would render Government Code § 20636's exclusions meaningless, because any extra amounts paid to a "manager" could be called "management incentive pay."

Additionally, Petitioner's November 2006 Contract made clear that various items of non-pensionable compensation would automatically "convert" to base salary. Accordingly, these items could also be considered "final settlement pay," which is also excluded from "special compensation." (Gov. Code, § 20636, subd. (g)(4)(G).)

CalPERS Regulation 570 defines "Final Settlement Pay" as:

"any pay or cash conversions of employee benefits in excess of compensation earnable, that are granted or awarded to a member in connection with or in anticipation of a separation from employment. Final settlement pay is excluded from payroll reporting to PERS, in either payrate or compensation earnable.

For example, final settlement pay may consist of severance pay or so-called "golden parachutes". It may be based on accruals over a period of prior service. It is generally, but not always, paid during the period of final compensation. It may be paid in either lump-sum, or periodic payments.

Final settlement pay may take the form of any item of special compensation not listed in Section 571. It may also take the form of a bonus, retroactive adjustment to payrate, conversion of special compensation to payrate, or any other method of payroll reported to PERS. (2 Cal. Code Regs., § 570.)

The March 2007 contract attempted to "convert" previously non-pensionable items to pensionable compensation. Respondents argue that there was no logical reason to convert non-pensionable pay items to base salary, other than to increase "compensation earnable" in anticipation of retirement, which occurred a little over two years after the conversion occurred. This argument is well-taken, as (1) Petitioner had already retired from the City of Pacifica before commencing employment with Vallejo, (2) Petitioner claims that he initially began working for Vallejo as a "retired annuitant", and (3) the Vallejo contracts were for a term of three years. Thus, CalPERS could reasonably infer that Petitioner could retire after separating from Vallejo, and that the "converted" non-pensionable items occurred in anticipation of a separation from employment.

Accordingly, CalPERS did not abuse its discretion in rejecting the claimed total amount of Petitioner's \$305,844 salary as pensionable on the basis that this amount included non-pensionable items that were not "special compensation."

iii. Vallejo's Authority to Determine Compensation and CalPERS' Authority to Review it

Petitioner argues that CalPERS' review of his retirement benefits cannot trump Vallejo's authority to contract with its employees and provide them a negotiated-for salary. The Court is not persuaded.

Vallejo's City Charter authorizes it to contract with CalPERS for the purpose of administering retirement benefits. (AR, 3616 [citing City Charter §§ 202, 807].) As such, Vallejo is subject to the PERL provisions and CalPERS' review of Vallejo employees' applications for retirement benefits. CalPERS is not obligated to accept the March 2007 Contract terms as compensation for purposes of calculating retirement benefits. (*Molina v. Board of Personnel Admin.*, *supra*, 200 Cal.App.4th at 67 [noting difference between salary and narrower definition of "compensation earnable".])

Further, CalPERS has a duty to its members to "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.) CalPERS has jurisdiction to administer and hear all matters related to Petitioner's application for retirement benefits.

iv. CalPERS' Authority to Review Petitioner's Employment as "Retired Annuitant"

Petitioner also argues that CalPERS lacked jurisdiction to investigate his claim for retirement benefits, because when he first began his employment as a City Manager, he was a "retired annuitant." The Court rejects this argument.

The "retired annuitant" sections of the PERL allow retired CalPERS members to work for a CalPERS-participating employer for a "limited duration" not to exceed 960 hours annually, while maintaining retirement status. (Gov. Code, §§ 21221, subd. (h), 21224.)

Further, Petitioners' November 2006 Contract provides that Petitioner will be initially hired as a "limited term employee" but then become a "permanent employee" and be reinstated in CalPERS "on or before March 8, 2007." (AR, 393.) The March 2007 Contract also makes the same provision. (AR, 458.) Accepting Petitioner's argument as true, a CalPERS beneficiary could evade any CalPERS review by structuring employment contracts to provide that the employee would be initially hired as a "retired annuitant" and then automatically become a permanent employee and CalPERS member shortly thereafter.

Because Petitioner's employment contracts provided that he would become a "permanent employee" on or before March 8, 2007, and because the contracts were for three-year terms, his initial "limited term" or alleged "retirement annuitant" status cannot preclude CalPERS from investigating his claim for retirement benefits.

v. Principles of Contract Interpretation Do Not Prohibit CalPERS from Reducing Petitioner's Claimed Retirement Benefits

Petitioner argues that principles of contract interpretation prohibit CalPERS from reducing his pensionable benefit from \$305,844 to \$216,446 because CalPERS may not look beyond the March 2007 Contract. The Court rejects these arguments.

For example, Petitioner argues that the parol evidence rule bars CalPERS from looking to the November 2006 contract in evaluating Petitioner's request for \$305,844 in pensionable compensation under the March 2007 Contract. Petitioner is mistaken.

The parol evidence rule, codified in Code of Civil Procedure section 1856 and Civil Code 1625, provides that when parties enter an integrated written agreement, extrinsic evidence may not be relied upon to alter or add to the terms of the writing. (Code of Civ. Proc., § 1856; Civ. Code, § 1625; *Riverisland Cold Storage, Inc.*, (2013) 55 Cal.4th 1169, 1174.) However, the parol evidence rule does not apply to exclude evidence of the circumstances under which the agreement was made or to which it relates, or to explain an extrinsic ambiguity or to otherwise interpret the terms of the agreement, or to establish illegality or fraud. (Code Civ. Proc., § 1856, subd. (g).)

CalPERS is mandated to investigate claims for retirement benefits. Further, it may require a member or beneficiary to provide information it deems necessary to determine CalPERS' liability with respect to, and an individual's entitlement to CalPERS benefits. (Gov. Code, § 20128.) Accordingly, the parol evidence rule does not bar CalPERS from examining the terms of the November 2006 and March 2007 agreements to examine the circumstances under which the agreements were made, explain an extrinsic ambiguity, or establish illegality or fraud.

City Council Resolution No. 07-68 authorized the mayor to execute the first "amendment" to the 2006 Contract. (AR, 418, 3615, 3616.) The City Council also believed that it was amending the 2006 Contract to incorporate the language recommended by CalPERS, and that the amendment would not change the cost of the original November 2006 Contract. The way to determine whether that was true—e.g., whether the \$305,844 claimed by Petitioner was pensionable—was to examine the differences between the November 2006 and March 2007 Contracts. (Id.)

Further, after CalPERS communicated to Vallejo that various items in the November 2006 Contract were nonpensionable, Vallejo then forwarded to CalPERS the March 2007 contract with a substantially higher base salary.

Accordingly, the parol evidence rule does not prohibit CalPERS from examining the two contracts.

The Court rejects Petitioner's other argument, that CalPERS is bound by the March 2007 contract, because it sought to reform a mutual mistake—that the parties thought they were negotiating for \$305,844 in pensionable compensation. The principles of contract interpretation,

and what Petitioner and Vallejo may have intended, do not trump CalPERS' authority to review a claim for retirement benefits.

vi. Estoppel

Petitioner claims that CalPERS is estopped from denying him the full amount of his requested pension. This argument is without merit.

Equitable estoppel may be asserted against the government in some circumstances. (*Medina v. Board of Ret.* (2003) 112 Cal.App.4th 864, 868.) The requisite elements for equitable estoppel against a private party are: (1) the party to be estopped was apprised of the facts, (2) the party to be estopped intended by conduct to induce reliance by the other party, or acted so as to cause the other party reasonably to believe reliance was intended, (3) the party asserting estoppel was ignorant of the facts, and (4) the party asserting estoppel suffered injury in reliance on the conduct. (*Ibid.*) "The government may be bound by an equitable estoppel in the same manner as a private party when the elements requisite to such an estoppel against a private party are present and, in the considered view of a court of equity, the injustice which would result from a failure to uphold an estoppel is of sufficient dimension to justify any effect upon public interest or policy which would result from the raising of an estoppel." (*Id.* at pp. 868-869.)

The elements of estoppel are not met. Namely, Petitioner did not reasonably rely on any representations or omissions from CalPERS. Rather, the facts show that he was aware that there may be problems associated with converting non-pensionable items to base pay. Additionally, the Court declines to exercise any equitable power after considering the equities on both sides of the dispute. (*Cortez v. Purolator Air Filtration Prods.* (2000) 23 Cal.4th 163, 179-180.) The Court finds that it would not be equitable to award Petitioner the vastly increased pension that he seeks.

vii. Laches

Petitioner claims that the doctrine of laches bars CalPERS from reviewing his amended employment contract in evaluating his claim for retirement benefits. The Court rejects this argument. Laches may apply to a public agency that unreasonably delays in taking action against the party, and the party is prejudiced as a result of that delay. (*City and County of San Francisco v. Pacello* (1978) 85 Cal.App.3d 637, 644-645.) Petitioner asserts, but has not shown that the delay was unreasonable, nor has he asserted any prejudice arising from the delay.

viii. Other claims

Petitioner's other claims, that CalPERS has discriminated against him, that CalPERS' actions are barred by the statute of limitations, and Petitioner's request for attorney fees pursuant to Government Code section 800 or any other applicable fees or costs, are without merit.

III. DISPOSITION

The Petition is **DENIED**. Counsel for Respondent is directed to prepare a formal order, incorporating the Court's ruling as an exhibit thereto, and a separate judgment, submit them to

counsel for the parties for approval as to form, and thereafter submit them to the Court for signature, in accordance with California Rules of Court, Rule 3.1312.

RULING AFTER HEARING

The matter was argued and submitted. The Court affirms the tentative ruling with the following modifications.

At oral argument, the parties extensively argued whether Petitioner's hiring and compensation negotiations were the product of underhanded dealings between Petitioner and Vallejo. The Court reached its decision on the merits by considering the applicable law. For this reason, the Court's ruling purposely does not consider address any "political" considerations raised by the parties, such as whether Vallejo violated the Brown Act.

The fifth and last paragraph, appearing at the bottom of page 7, is stricken and replaced with the following paragraph:

First, the value of these components of Petitioner's pay is excluded under the PERL. (Gov. Code, § 20636, subd. (c).) Government Code section 20636, subdivision (c) excludes from the definition of special compensation "(A) Final settlement pay. (B) Payments made for additional services rendered outside of normal working hours, whether paid in lump sum or otherwise [and] (C) Other payments the board has not affirmatively determined to be special compensation." CalPERS has not affirmatively determined that these items are "special compensation."

The citation to Government Code section 20636, appearing in the last line of the second full paragraph on page 8, is stricken and changed to (Gov. Code, § 20636, subd. (c)(7)(A).)

At the hearing, Counsel for CalPERS averred that Petitioner actually sought \$349,356 in pensionable compensation, but CalPERS found that Petitioner had "compensation earnable" of \$246,732 and retirement benefits of \$216,446. These changes in detail do not affect the Court's ruling. Petitioner challenges CalPERS' decision, which the Court upholds. Additionally, the parties agree that Petitioner claims that he is entitled to an annual unmodified retirement allowance of approximately \$305,000, rather than \$216,446. (Opposition, 2:14-16.)

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

JOSEPH TANNER

Case Number: 34-2013-80001492

vs.

**CALIFORNIA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM et al**

**CERTIFICATE OF SERVICE
BY MAILING (C.C.P. Sec. 1013a(4))**

CITY OF VALLEJO

I, the Clerk of the Superior Court of California, County of Sacramento, certify that I am not a party to this cause, and on the date shown below I served the foregoing **RULING ON SUBMITTED MATTER: PETITION FOR WRIT OF ADMINISTRATAIVE MANDAMUS AND WRIT OF MANDATE** by depositing true copies thereof, enclosed in separate, sealed envelopes with the postage fully prepaid, in the United States Mail at 720 9th Street, Sacramento, California, each of which envelopes was addressed respectively to the persons and addresses shown below:

John Jensen
11500 West Olympic Blvd, Suite 550
Los Angeles, CA 90064

Jeffrey Rieger
REED SMITH LLP
101 Second Street, Suite 1800
San Francisco, CA 94105-3659

I, the undersigned Deputy Clerk, declare under penalty of perjury that the foregoing is true and correct.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

Dated: December 22, 2014

By: M. GARCIA, 
Deputy Clerk