

**ATTACHMENT C**  
**RESPONDENT'S ARGUMENT**



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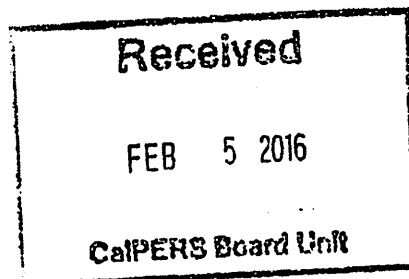
**Date:** February , 2016

**From:** Michael C. Huston

**Re:** In the Matter of the Application for Reciprocity in the Calculation of Final Compensation of GERE SIBBACH, Respondent, CITY OF MORRO BAY, Respondent and SAN LUIS OBISPO COUNTY, Respondent

**Pages:** 7 (including cover page)

**Message:** Respondent City of Morro Bay's Argument for Adoption of the Proposed Decision



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8 **BOARD OF ADMINISTRATION**

9 **CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

11 In the matter of the Calculation of Final  
 Compensation of GERE SIBBACH,

12 Respondent,

13 and

14 SAN LUIS OBISPO COUNTY AND CITY  
 15 OF MORRO BAY,

16 Respondents.

Case No. 2013-0552  
 OAH No. 2014110220

**RESPONDENT CITY OF MORRO BAY'S  
 ARGUMENT FOR ADOPTION OF THE  
 PROPOSED DECISION**

CalPERS Board Meeting Date: Feb. 18, 2016

ALESHIRE &  
 WYNDER, LLP  
 ATTORNEYS AT LAW



19 **I.**

20 **INTRODUCTION**

21 The City of Morro Bay ("City") supports the position of CalPERS staff in this matter and  
 22 respectfully requests that the Board of Administration of CalPERS ("Board") adopt the Proposed  
 23 Decision of the Administrative Law Judge ("ALJ"). In this matter, Respondent Gere Sibbach  
 24 ("Respondent" or "Sibbach") has sought final compensation reciprocity based solely on a theory of  
 25 promissory estoppel.

26 In the Proposed Decision, the ALJ properly upheld CalPERS' denial of Respondent's request.  
 27 The Proposed Decision is supported by law and fact, and properly concludes that as a matter of Public  
 28 Employees' Retirement Law ("PERL") law, Respondent is not entitled to final compensation

reciprocity due to his concurrent employment between the City and San Luis Obispo County ("County"). (Proposed Decision, p. 10, ¶6.)

## II.

### SUMMARY OF FACTUAL BACKGROUND

Respondent was employed by the City between December 22, 1980 and November 18, 1983. (*Id.* at p. 3, ¶3.) When he left employment with the City, he terminated his membership in CalPERS and received a refund of his accumulated CalPERS contributions. (*Id.* at p. 3, ¶4.) On October 17, 1983, Sibbach began working for the County and became a member of the San Luis Obispo County Pension Trust ("SLOCPT"). (*Id.* at p. 3, ¶5.) After Respondent began his employment with the County, SLOCPT entered into a reciprocity agreement with CalPERS. (*Id.* at p. 3, ¶8(a).) Respondent worked for the County until his retirement from the County on December 29, 2012. (*Id.* at p. 7, ¶16.)

In the months leading up to his retirement, Respondent requested information from CalPERS regarding the cost to purchase his withdrawn service credit and sought to receive a retirement allowance from CalPERS for his City service based on his final compensation with the County (known as final compensation reciprocity). CalPERS staff informed him of the cost to re-establish CalPERS membership and also informed him that he would not be eligible for final compensation reciprocity due to his concurrent employment between the City and the County in October and November 1983. (*Id.* at pp. 7-8, ¶¶17-18.) On January 12, 2013, Respondent elected to re-purchase his CalPERS service credit and made a first installment payment of \$342.08. (*Id.* at p. 8, ¶19(a).) Subsequently, he pursued an appeal of CalPERS' staff's decision regarding his eligibility for final compensation reciprocity.

## III.

### LEGAL ANALYSIS

#### **A. The ALJ Properly Concluded That There Is No Statutory Authority For The Relief Sought By Respondent.**

The parties in this matter do not dispute that Sibbach was concurrently employed by the City and the County. (*Id.* at p. 3, ¶¶3-6.) Furthermore, the parties do not dispute that the PERL precludes

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1 final compensation reciprocity where there has been concurrent employment between a CalPERS  
 2 employer and an employer under a new retirement system. As noted in the Proposed Decision, “[i]n  
 3 his appeal, Respondent does not dispute that concurrent employment in both systems would normally  
 4 preclude the application of full reciprocity, including the benefit referred to as ‘final compensation  
 5 exchange’ or final compensation reciprocity through which a member of the two systems involved  
 6 may receive a retirement allowance based on the aggregate number of years in both systems and the  
 7 highest salary earned in either system.” (*Id.* at p. 2.)

8 Specifically, Government Code section 20351 provides that reciprocity cannot be established  
 9 when there has been overlapping employment, *i.e.* where a member has not separated under the first  
 10 system prior to joining the new system. The ALJ correctly concluded that “[t]he plain language of the  
 11 statute requires separation from one system before entry into the other system for reciprocity between  
 12 the two to apply.” (*Id.* at p. 9, ¶2.) This interpretation is supported by CalPERS’ own official  
 13 publications pertaining to eligibility for reciprocity issued in 1997, 2000 and 2010, all of which  
 14 explain this requirement. (*Id.* at p. 6, ¶13(c)-(e).) In other words, “CalPERS has consistently  
 15 interpreted section 20351 to preclude full reciprocity in the computation of final compensation if there  
 16 has been concurrent employment in two systems.” (*Id.* at p. 9, ¶4.) Accordingly, the ALJ properly  
 17 concluded that as a matter of law, Respondent is not entitled to final compensation reciprocity. (*Id.* at  
 18 p. 10, ¶6.)

19 **B. The ALJ Properly Concluded That Estoppel May Not Be Invoked Here Because**  
 20 **CalPERS Does Not Have The Statutory Authority To Provide Sibbach Final**  
 21 **Compensation Reciprocity.**

22 Unable to rely on any statutory authority, Respondent has argued that he is entitled to final  
 23 compensation reciprocity based on the equitable doctrine of promissory estoppel. (*Id.* at pp. 10-12,  
 24 ¶8.) Respondent contends that CalPERS promised him in 1987 that final compensation reciprocity  
 25 would apply. (*Id.* at p. 11, ¶8.)

26 The ALJ correctly concluded that there is no evidence in the record that CalPERS made a  
 27 promise to Respondent that he would be entitled to final compensation reciprocity. CalPERS only  
 28 indicated that Respondent would be able to redeposit his withdrawn contributions and that he would

1 receive an annuity based on his CalPERS service with the City. CalPERS kept these promises. (*Id.* at  
2 p. 11, ¶8.)

3 Moreover, the ALJ properly concluded that granting Sibbach final compensation reciprocity  
4 would be contrary to CalPERS' rule of policy stated in Government Code section 20351. (*Id.* at p. 12,  
5 ¶8.) That rule plainly prohibits final compensation reciprocity where there has been concurrent  
6 employment.

7 As a general rule, courts have not invoked the doctrine of equitable estoppel where doing so  
8 would directly contravene statutory limitations. (*Longshore v. County of Ventura* (1979) 25 Cal.3d  
9 14, 28–29.) “[N]o court has expressly invoked principles of estoppel to contravene directly any  
10 statutory or constitutional limitations. [Citations.]” (*Ibid.*) Accordingly, the ALJ properly concluded  
11 that Sibbach cannot rely on promissory estoppel to obtain final compensation reciprocity.

#### 12 IV.

#### 13 CONCLUSION

14 For all of the foregoing reasons, the City respectfully request that the Board adopt the  
15 Proposed Decision.

16  
17 DATED: February 5, 2016

ALESHIRE & WYNDER, LLP  
MICHAEL C. HUSTON

18  
19  
20 By: 

MICHAEL C. HUSTON

Attorneys for Respondent CITY OF MORRO  
BAY



**PROOF OF SERVICE****STATE OF CALIFORNIA, COUNTY OF ORANGE**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Orange, State of California. My business address is 18881 Von Karman Avenue, Suite 1700, Irvine, CA 92612.

On February 5, 2016, I served true copies of the following document(s) described as **RESPONDENT CITY OF MORRO BAY'S ARGUMENT FOR ADOPTION OF THE PROPOSED DECISION** on the interested parties in this action as follows:

**SEE ATTACHED SERVICE LIST**

**BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Aleshire & Wynder, LLP for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Irvine, California.

**BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the document(s) to be sent from e-mail address [cdurkee@awattorneys.com](mailto:cdurkee@awattorneys.com) to the persons at the e-mail addresses listed in the Service List. The document(s) were transmitted at or before 5:00 p.m. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on February 5, 2016, at Irvine, California.

  
Carla D. Durkee



## SERVICE LIST

***Gere Sibbach and City of Morro Bay, et al.***

**Case No. 2013-0552/ОАҢ No. 2014/10220**

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