ATTACHMENT C

RESPONDENT'S ARGUMENT REGARDING THE PETITION FOR RECONSIDERATION

1

HOCH, MATTHEW, J.
RESPONDENT'S ARGUMENT IN SUPPORT OF PETITION FOR RECONSIDERATION

March 26, 2025

RESPONDENT'S ARGUMENT

In re: Matthew J. Hoch – Request for Reconsideration

ATT: Board Services Unit Coordinator California Public Employees' Retirement System (CalPERS) PO Box 942701 A12 XIV Sacramento, CA 94229-2701

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RESPONDENT'S ARGUMENT

I. INTRODUCTION

Respondent Matthew J. Hoch respectfully requests that the Board of Administration of the California Public Employees' Retirement System (CalPERS) decline to adopt the Administrative Law Judge's (ALJ) Proposed Decision dated February 19, 2025, and instead issue a revised ruling that accurately reflects the facts, statutory interpretation, and the legislative intent underlying CalPERS policies—specifically the application of *California Government Code section 20160* and the intent behind Publication 33 (PUB 33). This request arises from a clear and unmistakable error in CalPERS' calculation of retirement warrants during Respondent's short-term employment with the Chino Valley Fire Department (CVFD) from **February 11**, **2023**, **to April 21**, **2023**—a period totaling **68 days**. Respondent does not challenge that he worked unlawfully during this window; however, he challenges the miscalculation of recoupable benefits and asserts that CalPERS has unlawfully and excessively sought reimbursement for a full **three months of retirement benefits**, contrary to statutory purpose, equity, and precedent.

II. FACTUAL & PROCEDURAL BACKGROUND

CalPERS determined the Respondent is subject to reinstatement for the periods of **February 11**, 2023, to April 21, 2023 (See, A12, XIV), but erroneously imposed a retirement warrant dated **February 1**, 2023, which, according to CalPERS' own official publication, covers the **month of January 2023**. Respondent did not commence employment with CVFD until **February 11**, 2023. Therefore, any employment from that point forward could not retroactively invalidate the retirement received for the **entirety of January**, during which Respondent was lawfully retired. From **February 11 to April 21**, 2023, Respondent worked at CVFD for **68 calendar days**. He acknowledges he violated the post-retirement employment restrictions, and he has expressed contrition and a willingness to repay the proportionate amount of retirement benefits he received unlawfully during that period. However, CalPERS calculated the overpayment as \$29,072.40, erroneously treating the months of February, March, and April 2023 as wholly recoupable. This overreach is not only unsupported by statute or case law but also unjustly enriches the retirement system and imposes an undue financial hardship on the retiree—contrary to the remedial spirit of **PUB 33**.

III. LEGAL ARGUMENT

A. The ALJ Misapplied the Law by Treating February 2023 as Fully Recoupable

HOCH, MATTHEW, J.
RESPONDENT'S ARGUMENT IN SUPPORT OF PETITION FOR RECONSIDERATION

HOCH, MATTHEW, J.
RESPONDENT'S ARGUMENT IN SUPPORT OF PETITION FOR RECONSIDERATION

2

CalPERS' own public guidance confirms that **retirement payments are made on the first of the month for the previous month's service**. Therefore, the retirement check dated **February 1, 2023**, covers **January 2023**, during which Respondent had no post-retirement employment. CalPERS' attempt to recoup this January payment is **clearly erroneous**, in violation of both internal policy and fair application of retirement law. It constitutes a **clear and unmistakable error**, which under **Gov't Code § 20160** is subject to correction.

See: CalPERS, Retirement Check Pay Dates,

https://www.calpers.ca.gov/retirees/retirement-checks/pay-days

B. The ALJ's Decision Conflicts with the Intent of Publication 33

PUB 33 exists to prevent "double-dipping"—the simultaneous collection of retirement benefits while receiving active employee compensation. Its intent is **not** to financially devastate retirees who violate post-retirement rules. Respondent has **offered to forfeit 100 percent of the wages he received from CVFD**, amounting to \$9,184.14. In doing so, he has **eliminated any form of** "double dipping" enrichment, either personal or systemic, that could have occurred. This offer not only **cures the violation**, but it also honors PUB 33's spirit by removing any financial gain to either party. To penalize the Respondent beyond the period of which he was employed unlawfully—especially by demanding three full months of retirement pay—results in **punitive enforcement**, not equitable correction. The Board should resist such overreach.

C. Government Code § 20160 and Code of Civil Procedure § 473 Support Relief

Under Gov't Code § 20160, the Board may correct any error that results from "mistake, inadvertence, surprise, or excusable neglect." The statute was created to protect the integrity of the system while providing justice to members.

Similarly, **Code Civ. Proc. § 473(b)** allows relief where a reasonably prudent person might have made the same mistake under similar circumstances. Here, Respondent:

- Relied on Gov't Code § 7522.56 in good faith;
- Resigned immediately after learning of the issue;
- Believed employment under "limited duration" would not jeopardize benefits.

This mistake, while regrettable, is **excusable**. To deny relief ignores the very statutory language that exists to correct such instances.

D. The Overpayment Calculation is Excessive and Unlawfully Enriches CalPERS Respondent worked **68 days**, which equals:

- 51 days prorated (March & April), and
- 17 days prorated in February (Feb 11–28)

CalPERS' attempt to recoup **three full months** violates the **principle of proportionality** and imposes undue burden. Based on prorated daily rates, the **actual amount owed** should not exceed **\$22,358.06**; accordingly, the amount CalPERS is proposing (\$29,072.40) is clearly erroneous. Any amount above **\$22,358.06** is unjust and should be construed as **constructive extortion**, particularly when Respondent:

- Was not warned in advance by the CVFD that taking the Auxiliary Worker position would equate to him losing his entire retirement benefit and adversely affect his COLA benefits.
- Was misled by ambiguous language in governing codes.

E. Respondent's Actions Demonstrate Good Faith and Equity Demands Mercy

Respondent has not only acknowledged his mistake but has gone **above and beyond** to correct it—offering **to repay all active income**, and even requesting a **waiver** of remaining liability in exchange for a **lump sum payment**. CalPERS did not just miscalculate the amount they are entitled to recoup from the respondent, they have willfully withheld the fact that the Respondent paid \$613.65 into PERS while employed at CVFD. The Respondent is facing financial hardship but is also willing to forfeit what he paid into PERS during his period of unlawful employment – just in good faith. Please consider that Equity recognizes **intent**, **action**, **and effort to cure**. The Supreme Court in **Long Beach v. Mansell**, 3 Cal.3d 462 (1970), and **Medina v. Board of Retirement**, 112 Cal.App.4th 864 (2003), emphasized the importance of equity and fairness in pension matters. To deny mercy here would violate those precedents or at least vitiate its intent.

F. CalPERS Is Not an Injured Party and Has Suffered No Financial Harm

CalPERS has incurred **no tangible loss** from Respondent's mistake. He is willing to return the funds received—both salary and retirement. There is **no "injury" to the system** that justifies retention of additional sums. To take more than what was paid out during the violation period is not restitution—it is **profit**. And CalPERS, as a **public trust**, is not entitled to profit from honest mistakes or any form of unjust enrichment.

IV. CONCLUSION

This is not a case of deception, indifference, or willful misconduct. This is a case of **good faith gone misinformed**, **overreach by a system designed to protect**, and a man—**Matthew J. Hoch**—who took **full responsibility** for a 68-day misstep and made every effort to restore balance after being notified about his mistake.

The record is clear:

- The February 1, 2023 payment covered **January 2023**, a month during which Mr. Hoch was lawfully retired.
- His actual period of unlawful employment was **February 11 to April 21, 2023**, totaling **68 days**.
- He has **offered to repay all wages received during this period**, in addition to the retirement warrants **proportionate to actual days worked in his case 68**.
- CalPERS has incurred **no loss** and risks **unjust enrichment** by insisting on repayment beyond the actual overage.
- Respondent's actions reflect **accountability**, **humility**, **and a sincere commitment** to remedy the error.

To uphold the ALJ's decision would set a **harsh and precedent-breaking standard** that punishes transparency and discourages honest correction. It would violate the very **intent of PUB 33**, which is to **prevent abuse—not to impose ruin**. For example, if the Board upholds the ALJ's proposed decision and CalPERS is able to recoup the Respondent's entire retirement benefit for the entire months of February and April, even though he only worked 16 and 21 days respectively during those months, what is to stop them from recouping a full month of retirement benefits from a retiree who innocuously worked one or two days unlawfully? I humbly implore the Board to reverse the ALJ's decision and adopt the Respondent's requests below:

- Decline to adopt the Proposed Decision of the ALJ in favor of equity and statutory clarity;
- Correct the calculation of retirement overpayment to exclude the February 1, 2023, warrant;
- Limit the recoupment of benefits to be consistent with the actual period of employment

HOCH, MATTHEW, J.

RESPONDENT'S ARGUMENT IN SUPPORT OF PETITION FOR RECONSIDERATION

i.e., 68 days or for the periods of March 2023, April 2023, and 8 days of February, whichever amount is lesser.

- Accept the return of all wages earned during the violation period as a full and fair resolution in line with PUB 33's intent;
- And if applicable, **grant a waiver or settlement option**, as the respondent is electing to resolve the matter in a single good faith payment to CalPERS.

Respectfully Submitted,

/s/Matthew J. Hoch March 26, 2025

Applicable Evidence

Attachment A: Proof of CVFD earnings from 02/11/23 to 04/21/23

Attachment B: CalPERS retirement warrant breakdown

Attachment C: Copy of PUB 33 summary with legislative intent highlights

Attachment D: Respondent's personalized and less formal argument in support of petition for reconsideration.

Attachment E: Proof of payment into PERS during periods of February 11, 2023, to April 21, 2023

4

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CalPERS further determined that Respondent is subject to reinstatement for the period of February 11, 2023, through April 21, 2023, and must repay all the retirement benefits totaling approximately \$29,072.40 he received from CalPERS during that period.

By letter dated September 25, 2023, CalPERS informed Respondent, with copy to Respondent District, of its final determination and advised Respondent of his appeal rights.

XVI

On October 19, 2023, Respondent requested a 30-day extension through November 24, to submit an appeal, and CalPERS approved Respondent's request.

XVII

By email of November 11, 2023, Respondent submitted a timely appeal and requeste administrative hearing.

XVIII

This appeal is limited to the following issues:

- Whether Respondent's post-retirement employment from February 11, 2023
- April 21, 2023, is in violation of the PERL; and
- Whether CalPERS may collect the overpayment of approximately \$29,072 etirement benefits associated with the post-retirement employment.

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Restrictions on Post-Retirement Employment

State and federal laws provide specific employment restrictions for retirees who return to work with an employer in the same public retirement system from which they receive a benefit.

These restrictions are intended to prevent the "double-dipping" of a retiree receiving a monthly CalPERS retirement benefit while also receiving a salary from permanent or regular staff employment with a CalPERS employer. Retirees may work in retired annuitant positions only. See "Retired Annuitant Rules" beginning on page 7. Disability retirees are subject to additional requirements and restrictions. Also see "Disability Retirees – Additional Requirements and Restrictions" beginning on page 14.

A58

Exhibit 5 Page 5 of 23

March 25, 2025

ATT: Board Services Unit Coordinator California Public Employees' Retirement System (CalPERS) PO Box 942701

Sacramento, CA 94229-2701 Email: <u>Board@CalPERS.ca.gov</u>

FAX: 916-795-3972

Respondent's Argument

Dear Board of Administration,

After a thorough and careful review of all evidence before me, to my chagrin and with great humility, I concede to the facts presented, with one exception, the amount owed, which is clearly and unmistakably erroneous. February 11, 2023, falls on a Saturday. I did not start working for CVFD until February 13, 2023, the following Monday. Nevertheless, to maintain consistency, I will concede that I started working for CVFD on February 11, 2023 (without waiving my right to recovery). Accordingly, I only worked 17 days in the month of February 2023, which totals \$5,883.70 (9690.80 \div 28 =346.1*17). Although I got paid February 01, 2023, CalPERS is unjustly, erroneously, and **unlawfully enriching** themselves by trying to recoup payment for a period that I was fully retired and not required to be reinstated. Pursuant to CalPERS own website, my payment for February 01, 2023, was not for the month of February as CalPERS calculated erroneously (https://www.calpers.ca.gov/retirees/retirement-checks/paydays#:~:text=Benefits%20are%20paid%20at%20the,are%20placed%20in%20your%20account). My February 01, 2023, retirement payment was for the month of January, 2023, which was a bona fide period of retirement in which no unlawful unemployment occurred. As such, my payment on March 01, 2023, was for the month of February 2023, and should have been \$5,883.70 - not \$9,690.80 because I was only unemployed unlawfully for 17 days in the month of February 2023. I was fully retired with no periods of unlawful employment during the month of January 2023; therefore, my retirement payment for that month should not be recouped. To do so would be excessive and a violation of my 14th Amendment right to equal protection.

I did work the full month of March 2023, and if repayment is required for that month, I will oblige and have no qualms with CalPERS recouping the full amount of \$9,690.80. For the month of April 2023, I only worked a total of 21 days; therefore, the amount of unlawful retirement payment I received for that month was \$6,783.56 - not \$9,690.80 (\$9690.8/30 = 323.02*21=\$6,783.56). When considering the facts and the applicable laws, I am only required to reimburse CalPERS the amount of retirement allowance [I] received during the period of unlawful employment. Nothing more, nothing less. That period of unlawful employment was from February 11, 2023, to April 21, 2023 (68 calendar days total), as the ALJ and CalPERS conceded already. The actual amount CalPERS paid me for my period of unlawful employment when prorated correctly is \$22,358.06 (\$5883.70+\$6783.56+\$9690.80), not \$29,072.40 as CalPERS calculated erroneously. Therefore, the amount owed must be \$22,358.06. Anything more would equate to unjust enrichment, which is not the intent of PUB33. If for some reason the Board deems my prorated calculations inaccurate, please provide me with an itemized payment breakdown detailing how the board or CalPERS determined the total amount owed to

preserve my right to due process. If the board concedes to my proposed amount of \$22,358.06, I humbly request a sympathetic waiver of that debt or reduction from \$22,358.06 to \$10k. I am not trying to exploit the board's sympathy with this request. My request is based on the reasonable assessment that I only worked one full month unlawfully, which was during the month of March 2023. In that month, I received \$9,690.80 in retirement benefits - hence why I am requesting to pay only \$10k. The other two months, February and April, I only worked for part of the month – 38 days total for both months combined.

Moreover, please consider that pursuant to PUB33, the intent of restrictions on post-retirement employment is to prevent the "double-dipping" of a retiree receiving a monthly CalPERS retirement benefit while also receiving a salary from permanent or regular staff employment with a CalPERS employer. If I knew fully that taking a job in which I grossed less than \$4k monthly would cost me to forfeit \$9690.80, and then potential COLA benefits in perpetuity, I would have declined the job. I only took the job because I thought I was protected under California Government Code section 7522.56. In retrospect, I was wrong. I was foolish not to consult with a legal expert or CalPERS' Working After Retirement Division prior to taking the job and assuming I was protected, and if not, the consequences would be light - not excessive or dire. I underestimated my role in ensuring I was protected by doing my own due diligence to research and investigate applicable laws governing post-retirement employment. I understand that I put myself in this precarious position. This is my fault. Therefore, I am at the Board's mercy. All I can do is give you a better understanding of why I put myself in this position, which I hope prompts leniency and preservation of jurisprudence in return. It is fair to perceive the Board would agree that no reasonably prudent person would forfeit \$9690.80 of monthly income for a mere \$4k just to "double-dip." It is clear that I was under the impression that I was protected and would not be jeopardizing or forfeiting my retirement income, which I depend on solely to support myself and family. I would not take \$4k monthly to lose \$6k monthly; that would defeat the purpose of my post-retirement employment. The sole purpose of me working was to get myself out of the financial hardship that was created by having to wait 180 days for my first retirement payment from CalPERS. I had no intention to "double-dip" or deceive CalPERS.

During that 180-day waiting period, I went from making \$11,200 monthly, to \$0, which put me in a \$67,200 deficit. I was forced to liquidate most of my savings and forced to do odd jobs to sustain myself financially. Odd jobs were not a sustainable or reliable source of income, so I sought other means to support myself. After doing research on post-retirement employment, I discovered *Gov. Code* 7522.56. I should have relied on PUB33 or contacted CalPERS directly, albeit I naively latched onto the language of "*limited duration*" and failed to read the *fine print*. I sought work with confidence after reading *Gov. Code* 7522.56 because I did not see a definition of *limited duration* and presumed one did not exist. I was under the impression that as long as I did not work longer than the allotted "*limited duration*," which was not clearly defined in *Gov. Code* 7522.56 (c), I was good, and if not, I would resign immediately. I worked for CVFD for a total of 68 days. When I learned that I was not protected, I resigned immediately on my own merit to alleviate "*double-dipping*" and potential reinstatement or warrants. To preserve the intent of PUB33 and all other governing laws for post-retirement employment, I have no issues forfeiting the total amount I was paid during my period of unlawful employment with the CVFD, which was \$9,184.14 (see attached paystub). In addition to paying CalPERS the amount CVFD

Request for Reconsideration

paid me for my period of unlawful employment, I am also willing to pay CalPERS \$9,690.80 for the retirement benefits I received unlawfully in March of 2023. When combining both amounts, the total I would owe CalPERS outright would be \$18,874.94 (\$9,184.14+\$9,690.80), instead of the \$22,358.06 I calculated. Although the prorated amount of \$22,358.06 is lawful, that amount is still unjustly enriching to CalPERS, which vitiates the intent and efficacy of PUB33, i.e., to strictly prevent "double-dipping," not punish or deter retirees from post-retirement employment.

To allow CalPERS to recoup my entire retirement benefit for only 16 or 21 days of unlawful employment, would set a precedent that could be injurious to future retirees who may make the same innocuous mistake as me, but for a shorter unlawful employment period. For example, if the Board upholds the ALJ's proposed decision and CalPERS is able to recoup my entire retirement benefit for the entire months of February and April, even though, I only worked 16 and 21 days respectively, what is to stop them from recouping a full month of retirement benefits from a retiree who innocuously worked one or two days unlawfully? As such, I implore the Board to correct CalPERS miscalculation of the amount owed from the unlawful employment period of February 11, 2023, to April 21, 2023, which is \$22,381.96. Furthermore, I ask the Board to sympathetically accept my offer of paying CalPERS a total of \$18,874.94 or \$10k immediately and waive my requirement to reinstate myself from retirement for the period of February 11, 2023, to April 21, 2023, as CalPERS offered me previously (see Ex 11, A94). I understand CalPERS explicitly stated that if I did not choose a remedy, their offer would be revoked permanently. I am not trying to be the exception. Please just know, I was naïve about how to correct the erroneous amount of \$29,072.40 that CalPERS suggested was owed and felt indignant. I admit, I was emotional. I felt if I conceded to that substantially erroneous amount, I would be allowing CalPERS to extort me constructively.

I have already had previous trauma in the past, which led to a diagnosis of PTSD and an involuntary resignation. As such, my PTSD sometimes, if not most times, gets the best of me and causes me to respond viscerally instead of with reasonable prudence. Please do not allow my desperation and zeal to provide for my family and subsequent lapse of circumspect to cause them harm. I made an innocuous mistake in good faith. CalPERS and the ALJ did not contend when I asserted that CalPERS is not an injured party in this matter. If CalPERS is not injured and I am willing to pay them up to the amount owed prorated, I do not see why I should bear the brunt of burden or consequences. I am already creating financial hardship by paying over \$18k outright. If reinstatement is required, that would cause another hardship that could have long term adverse effects on my COLA and other potential benefits. CalPERS already offered to waive reinstatement requirements if I absolved my debt fully, which I am attempting to do now. Please accept this payment as absolution of all of my CalPERS retirement warrants and any reinstatement requirements with prejudice. Thank you for your time and consideration.

Respectfully,

/s/Matthew Hoch

Attachment:

1. Proof of CVFD income for the unlawful employment period of 02/11/2023 to 04/21/2023

Company: Address:

Department:

Chino Valley Fire District 14011 City Center Drive Chino Hills, CA 91709 ADMIN-Supp Svcs Administration/Support Services

Name:

Hoch, Matthew

20230200 Employee#:

Pay Dates:

04/08/2023 - 04/21/2023

Hours Code		-	Hours Worked	Gross	Y.T.D. Gross
FT HOURS	Full Time Hours		80.0000	1600.80	7803.90
HOL PAY OUT	Holiday Pay - Separation		16.9000	338.17	338.17
VAC PAY OUT	Vacation Pay - Separation		15.4000	308.15	308.15
SDI PAY	SDIPay		0.0000	23.73	96.72
BACH PAY 40	Bachelor Degree Pay 40 Hour		80.0000	92.00	460.00
TECH ALLOW	Technology Allowance		0.0000	66.92	334.60
SICK LOST	Sick Hours Lost		14.7600	0.00	0.00
HOL (DIST)	District Paid Holiday		0.0000	0.00	200.10
401A PAY	401a ER Contribution		0.0000	230.77	1153.85
CLOTHING ALLOW	Clothing Allowance (Non-Mgml	0	0.0000	0.00	150.00
			Gross Pay:	\$2,660.54	\$10,845.49
Withholdings and Ded	uctions	Gross	Amount	Y.T.D. Amount	
401A DED	401a Deferred Comp		0.00	230.77	1153.85
CASWT	California State Withholding Ta	X	2328.27	23.92	57.93
FWT	Federal Withholding Tax		2328.27	171.32	561.72
HOUSE FUND	House Fund		0.00	4.00	20.00
	Medicare Tax		2451.00	35.55	142.07
PEPRA MISC EE	CalPERS Misc Normal Cost De	id	1692.80	122.73	613.65
SDI	State Disability Insurance		2636.81	23.73	96.72
	Teamsters Dues Deduction		1600.80	20.81	104.05
TEAMSTERS FUND	Teamsters Admin Fund Deduct	tion	0.00	1.75	8.75
			NetPay:	\$2,025.96	\$8,086.75
			CheckAmount:	0.00	
Employer Paid Taxes a	and Benefits		Gross	Amount	Y.T.D. Amount
	Medicare Tax		2451.00	35.55	142.07
	State Unemployment Tax		0.00	0.00	112.00
	Group Term Life - 250k		0.00	21.47	107.35
	CalPERS Misc Normal Cost Ef	3	1692,80	131.36	656.80
	PERS SURVIVOR BENEFIT C		0.00	0.93	4.65
Accrual Hours	Starting Balance	Hours Earned	Hours Taken	Adjustment	Ending Balance
Holiday-Holiday	16.9000	0.000		0.0000	0.0000
Sick-Sick	14,7600	0.0000	14,7600	0.0000	0.0000
Vacation-Vacation	12.3200	3.0800		0.0000	0.0000
Bank		Transaction !	Number Deposit		Deposit Amount
.P. Morgan Chase Bank	- LUMICON RECEIVE		2025.96	8086.75	
Broadcast Message			The second secon		



THIS IS NOT A CHECK

Matthew Hoch

04/27/2023

\$2,025.96