

ATTACHMENT C

RESPONDENT'S ARGUMENT

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BOARD OF ADMINISTRATION

CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

In the Matter of the Appeal of Public
Employees' Pension Reform Act Enrollment of:

AGENCY CASE NO. 2024-0417
OAH NO. 2025031861

BENJAMIN M. ELIZONDO.

RESPONDENTS' ARGUMENT

Respondent,
and

RESPONDENTS' ARGUMENT

CITY OF GARDEN GROVE,

Respondent.

AGENCY CASE NO. 2024-0489
OAH NO. 2025030855

In the Matter of the Appeal of Public
Employees' Pension Reform Act Enrollment of:

RAPHAEL M. LEE,

Respondent,

and

CITY OF GARDEN GROVE.

Respondent.

I. INTRODUCTION

Respondents Benjamin Elizondo and Raphael Lee urge the Board of Administration for the California Public Employees Retirement System (“Board”) to **reject** the Proposed Decision by Administrative Law Judge Taylor Steinbacher (“ALJ”) and to adopt a new decision characterizing them as “Classic” members of CalPERS entitled to the 3@50 retirement formula for safety members. It is undisputed that Elizondo and Lee commenced employment as Police Recruits with the City of Garden Grove (“City”) on October 2, 2012 and continuously worked on a full-time basis, 40 hours per week, in that capacity from October 2, 2012 to through April 9, 2013, a period of greater than six months. As such, the exclusion contained in Government Code section 20305, for “An employee whose appointment or employment contract does not fix a term of full-time, continuous employment in excess of six months is excluded from this system...” does not apply to Respondents. Consequently, they should have become members of CalPERS on October 2, 2012, and by virtue of doing so, are entitled to “Classic” membership status. Should the Board adopt the ALJ’s Proposed Decision, not only would it result in a misapplication of Section 20305, it would justify the disparate treatment of Respondents from every other Police Recruit hired by the City, either before or after Respondents, as all previous and subsequent Police recruits were enrolled with CalPERS upon hire.

**II. GOVERNMENT CODE SECTION 20305 DOES NOT APPLY TO
RESPONDENTS**

In Legal Conclusion Paragraph #8 in the Proposed Decision, the ALJ holds that Section 20305 applies because “respondents’ offer letters did not provide for a term of full-time continuous employment of more than six months, and respondents have pointed to no other records from the City about their appointment suggesting otherwise.”

This reading of Section 20305 is incorrect because there is no requirement in Section 20305 for the “appointment or employment contract” to be contained in a particular type of document, such as an acceptance letter, or in any document at all. Rather, the statute allows for their **appointment** to fix a full-time, continuous employment in excess of six months. In this case, Respondents’ appointments were made during phone calls with Recruiter Art Tintel,

1 where he told them that they would be working full-time as Police Recruits from October 2,
2 2012 to April 9, 2013, a period in excess of six months. (2 RT 10:5-7; 13:10-14:4; 18:19-24.)

3 Lee testified about his call with Tintle as follows:

4 He told me that we had been -- we had passed the background
5 check and that we were going to be given a conditional job offer
6 and hired for the police recruit position and that the start date for
7 the academy -- Well, we were going to start actually October 2nd
8 for pre-academy, which would have been two weeks. And then
9 we were told that the academy we would be joining would be
10 Class 204 at the Sheriff's Academy and then given the dates for
11 that, which were October 15th through April 9th with an April
12 10th graduation day.

13 (2 RT 13:10-14:4.) Lee accepted the offer on the phone. (2 RT 10:5-7.)

14 Tintle also told Lee that his academy would be full-time. (1 RT 62:2-17.) He testified
15 that, after the call with Art Tintle, Lee knew the start date and end date of the academy. (2 RT
16 16:18-17:4.) Subsequent to the phone call with Tintle, Lee enrolled in a TAPS class as ordered
17 by Tintle. Based on the date of the confirmation email of September 11, 2012, Lee testified
18 that the offer phone call with Tintle was prior to September 11, 2012. (2 RT 15:17-16:17;
19 Exhibit T.)

20 Elizondo testified that, during his call with Tintle, Tintle congratulated him and told
21 him to be ready for Class 204 with the Orange County Sheriff Department. (2 RT 19:3-5;
22 Exhibit V.) On the call, Elizondo accepted the job. (2 RT 19:6-9.) Also on the call, Tintle told
23 Elizondo that the academy dates were going to be from October 15 through April 9. (2 RT
24 20:2-8.) Tintle also told him about the pre-academy requirements and the TAPS requirement.
25 (2 RT 20:9-20; 16:1-2.) He also told Elizondo that he would be working full-time, 40 hours per
26 week. (1 RT 33:9-13.) After the phone call, Elizondo understood that he would be a Police
27 Recruit from October 2-April 9. (2 RT 20:21-24.)

28 Perhaps most importantly, Elizondo and Lee were each given the Orange County
Sheriff's Department Academy Class 204 schedule, which they were required to complete
pursuant to the terms of their employment. (2 RT 10:8-10; 12:3-6; 19:11-20:1; Exhibit V.)
Based on Exhibit U, a photo showing Lee wearing some of the materials he was given by the

1 City, and the date of the photo, Lee testified that he must have been given the materials on or
2 before September 26, 2012, after his call with Tintle, but before he this acceptance letter. (2
3 **RT 12:7-15.) By virtue of being given that schedule, with a graduation date of April 9,**
4 **2013, this served to fix their employment for a continuous period beyond six months.**

5 Although the acceptance letters reference only their October 2, 2012 start date (see Exhibits C
6 and D), it is undeniable that Respondents were required to attend the Academy through April 9,
7 2013.

8 **III. CALPERS IS ESTOPPED FROM DENYING RESPONDENTS' CLASSIC**
9 **STATUS**

10 CalPERS is estopped from denying Elizondo and Lee membership as of October 2,
11 2012 based on representations made by the City's Police Recruiter, Art Tintle, to Elizondo and
12 Lee that they would be entitled to "Classic" membership status if they entered the academy
13 prior to January 1, 2013.

14 "The doctrine of equitable estoppel is founded on concepts of equity and fair dealing. It
15 provides that a person may not deny the existence of a state of facts if he intentionally led
16 another to believe a particular circumstance to be true and to rely upon such belief to his
17 detriment." (*Strong v. County of Santa Cruz* (1975) 15 Cal. 3d 720, 725.) A party alleging
18 equitable estoppel must show: (1) the party to be estopped must be apprised of the facts; (2) he
19 must intend that his conduct shall be acted upon, or must so act that the party asserting the
20 estoppel has a right to believe it was so intended; (3) the other party must be ignorant of the
21 true state of facts; and (4) he must rely upon the conduct to his injury. (*City of Long Beach v.*
22 *Mansell* (1970) 3 Cal.3d 462, 488-489.)

23 "The relationship between the city and the [CalPERS] board is such that estoppel of the
24 city is binding on the board." (See *Crumpler v. Board of Administration* ("Crumpler") (1973)
25 32 Cal.App.3d 567, 582.)

26 Here, all of the elements for estoppel are met. The City was apprised of the facts. It was
27 aware that Elizondo and Lee were interested in becoming Police Officers. Art Tintle, the
28 City's Recruiter, told Elizondo and Lee that they needed to enter the academy prior to effective
date of the new pension law, January 1, 2013. He told Elizondo that the retirement law was

1 changing (1 RT 23:11-13) and that it would be smart to come on board before January 1, 2013.
2 (1 RT 23:14-16.) Lee had also been told by Art Tintle that to beat the pension reform, he
3 would need to become an officer, or at least get hired before January of 2013. (1 RT 59:4-12.)
4 Lee explained that it was common knowledge throughout the Department that there was kind of
5 a “rush factor” to becoming hired before January 2013. (1 RT 59:13-17.)

6 Certainly, Tintle’s representations to Elizondo and Lee were intended to get them to
7 become Police Recruits with the City. Elizondo testified that he canceled an interview with the
8 Orange Police Department based upon representations by Tintle and applied with Garden
9 Grove. (1 RT 26:17-27:6.) Lee initially applied to other agencies, including Riverside County
10 Sheriff’s Department. (1 RT 59:22-60:1.) He made it into background investigations, but did
11 not end up taking the job because he was offered a job at Garden Grove by Art Tintle. (1 RT
12 60:2-8.)

13 Thus, they both relied on Tintle’s representations in foregoing employment with the
14 City of Orange and Riverside County Sheriff’s Department respectively and seeking
15 employment as a Police Recruit with the City. Elizondo’s career plan was to complete his
16 bachelor’s degree and maybe a master’s degree before becoming a police officer. (1 RT 24:23-
17 25:3.) Upon hearing about the Public Employees Pension Reform Act, he dropped out of Cal
18 State Long Beach in order to pursue the police recruit position. (1 RT 25:4-11.) Though not an
19 element of the estoppel test, Elizondo and Lee’s reliance was reasonable as Tintle was the
20 Police Recruiter for the City and the City had a pattern and practice of enrolling Police Recruits
21 with CalPERS as member upon commencement of services in the position. (Exhibit K.)

22 Both Respondents suffered injury in that they gave up employment in other agencies.
23 Both also forwent additional educational opportunities in order to become Police Recruits by
24 January 1, 2013. Given the minimum retirement age of 57, it did not make as much sense to go
25 from being a young recruit. According to Elizondo, it did not make sense to come in at 21 and
26 retire at 57 when he could come in later and be no worse off. (1 RT 28:1-14.)

27 At no time prior to the commencement of their employment as Police Recruits did the
28 City or CalPERS ever advise Elizondo or Lee that they would be excluded from membership or

1 have their membership delayed until they had worked a certain number of hours. According to
2 CalPERS' employee Harris, it is best practice for the employer to notify the employee that they
3 are not going to be enrolled upon hire. (1 RT 216:12-19.) He testified that he was not aware
4 that Exhibit E, a notice of non-enrollment, was ever given to Elizondo or Lee. (1 RT 216:20-
5 22.)

6 On the contrary, consistent with Tintle's representations, the City even enrolled (at least
7 Elizondo) in October of 2012 upon appointment to the Police Recruit (1 RT 152:11-25; 215:12-
8 17; Exhibit 10), just as it has with all Police Recruits, both before and after Elizondo and Lee.
9 (See Exhibit K.) Harris testified that the City initially enrolled Elizondo in CalPERS in
10 October 2012 and was told to cancel the membership. (1 RT 152:11-25; Exhibit 10.) There is
11 no other documentation that shows this because CalPERS had a different system and many
12 documents did not survive the transfer. (1 RT 200:21-201:6.) There is no indication that
13 Elizondo was provided with notice that the City enrolled him and then unenrolled him. (1 RT
14 215:12-17.)

15 The City and CalPERS are therefore estopped from denying Elizondo and Lee
16 membership on these facts.

17 Despite the above, in Paragraph 18 of the Proposed Decision, the ALJ incorrectly states,
18 "Here, no evidence suggests CalPERS knew Tintel (sic.) initially represented to respondents
19 that they would be "classic members" to induce them to enter the police academy or that he
20 later informed respondents they would in fact be new members some time later." From this
21 statement, it is apparent that the ALJ overlooked the evidence introduced by CalPERS showing
22 that it indeed originally classified Elizondo as a Classic member as reported by the City, but
23 subsequently and without notice to Elizondo, changed his status.

24 The ALJ also fails to consider that CalPERS has had knowledge of the City's manner of
25 enrolling employees upon hire as Police Recruits. Exhibits K shows that the City has enrolled
26 everyone of its Police Recruits upon hire, with the exception of Elizondo and Lee. According
27 to the ALJ, "although it is no doubt troubling to respondents that the City may have enrolled
28 other police recruits as CalPERS members immediately upon their hiring, that issue is beyond
the scope of this hearing." On the contrary, the fact that the City has constantly been enrolling

1 other Police Recruits shows that CalPERS has had knowledge of the City's recruiting practices.
2 CalPERS cannot hide its head in the sand and deny knowledge of this consistent practice to the
3 detriment of its members Elizondo and Lee.

4 Finally, the ALJ's reliance on *City of Pleasanton v. Board of Administration* (2012) 211
5 Cal.App.4th 522 ("Pleasanton"), is also unavailing. In *Pleasanton*, the Court of appeal rejected
6 a CalPERS' member's estoppel argument, stating, "The first element of estoppel, that PERS
7 knew the true facts, requires proof of either actual knowledge or of "careless and culpable
8 conduct resulting in the deception of the party entitled to claim the estoppel." (*Id.* At 43.) As
9 set forth above, CalPERS knew, or at the very least, was careless regarding the City's
10 longstanding practice of enrolling its Police Recruits into membership upon hire. (Exhibit K.)
11 And in the case of Elizondo, it specifically knew that the City had originally enrolled him upon
12 hire, but deceptively and without notice to him, told the City to cancel his enrollment. On these
13 facts, it cannot be said that CalPERS is unaware of the City's conduct.

14 **IV. CONCLUSION**

15 For all of the reasons set forth here and in Respondents' Closing Brief, Respondents
16 respectfully request the Board **reject** the Proposed Decision by the ALJ and to adopt a new
17 decision characterizing them as "Classic" members of CalPERS entitled to the 3@50
18 retirement formula for safety members.

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20 Dated: January 2, 2026

Respectfully submitted,

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22 **RAINS LUCIA STERN
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PROOF OF SERVICE

I am employed in the City of Los Angeles, State of California. I am over 18 years of age and not a party to this action. My business address is Rains Lucia Stern St. Phalle & Silver, PC, 16130 Ventura Blvd., Suite 600, Encino CA 91436.

On the date below I served a true copy of the following document(s):

RESPONDENTS' ARGUMENT

on the interested parties to said action by the following means:

(BY MAIL) By placing a true copy of the above, enclosed in a sealed envelope with appropriate postage, for collection and mailing following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that the 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.

(BY OVERNIGHT DELIVERY) By placing a true copy of the above, enclosed in a sealed envelope with delivery charges to be billed to Rains Lucia Stern St. Phalle & Silver, P.C., for delivery by an overnight delivery service to the address(es) shown below.

(BY FACSIMILE TRANSMISSION) By transmitting a true copy of the above by facsimile transmission from facsimile number (310) 393-1486 to the attorney(s) or party(ies) shown below.

(BY MESSENGER) By placing a true copy of the above in a sealed envelope and by giving said envelope to an employee of First Legal for guaranteed, same-day delivery to the address(es) shown below.

(BY HAND DELIVERY) By personal delivery of a true copy of the above to the attorneys or parties shown below

(BY E-MAIL or ELECTRONIC TRANSMISSION) I caused the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable period of time, after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

DATED: January 2, 2026

/s/ Michele Hengesbach
Michele Hengesbach

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