

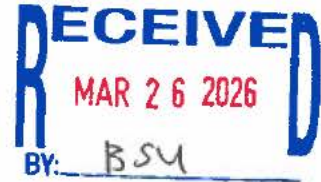
ATTACHMENT C

RESPONDENT(S) ARGUMENT(S)

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March 23, 2026

CalPERS Board of Administration
Lincoln Plaza North
400 Q Street
Sacramento, CA 95811

VIA FEDERAL EXPRESS

Re: In the Matter of Reimbursement of Retirement Allowance Received During Periods of Employment in Violation of Working After Retirement Laws from: Tarlochan Sandhu, Margaret Souza, David Dowswell, Estate of Douglas Breeze, and City of Capitola, City of Alameda, Town of Los Altos Hills, Union City, City of Hughson, City of Dixon, and City of Atascadero, Respondents (OAH Case No. 2025040541)

Respondents Tarlochan Sandhu, Margaret Souza, and David Dowswell; the Estate of retiree Douglas Breeze, and the Cities of Hughson and Atascadero respectfully urge the Board of Administration for the California Public Employees Retirement System ("Board") to adopt the Proposed Decision by Administrative Law Judge Juliet E. Cox ("ALJ").

I. INTRODUCTION AND SUMMARY OF THE CASE

Respondents successfully challenged CalPERS forced reinstatement and related financial penalties for alleged unlawful post-retirement employment occurring in 2011-2016, and the unlawful termination of their retiree health coverage. After careful and exhaustive analysis, the ALJ correctly concluded that Government Code section 20164(b)(1) imposed a three-year statute of limitations by which CalPERS staff could have, yet failed, to forcibly reinstate Respondents into active membership or to seek recovery of pension reimbursement and employee/employer contributions for alleged unlawful post-retirement employment.

In 2021 this Board adopted decisions finding that the above individuals were common law employees of various cities to which they were assigned as time-limited high level financial or program advisors by their employer, Regional Government Services Authority ("RGS"), a public joint powers agency.

BAR ADMISSIONS:

UNITED STATES SUPREME COURT

UNITED STATES COURT OF APPEALS: DISTRICT OF COLUMBIA, NINTH AND TENTH CIRCUITS • ALL CALIFORNIA FEDERAL AND STATE COURTS

Significantly, in the proposed decision, the ALJ recognized that the 2021 appeal hearings CalPERS specifically denied Respondents an opportunity to present evidence and adjudicate their affirmative defenses, including but not limited to whether a statute of limitations time-barred CalPERS recovery of pension allowances reaching back to as early as 2011. Thus the appeal now before this Board constitutes the first opportunity for Respondents to adjudicate the imposed penalties resulting from forced reinstatement.¹

By way of example, the ALJ concluded that CalPERS filed its statement of issues against Sandhu more than three-years “after not only discovering the employment but filing a statement of issues in fall 2020 characterizing it as excessive (and refusing expressly to litigate the appropriate penalty).” Pp. 58-59, ¶¶ 19-20.²

“Complainant argues that the CalPERS Board decision described in Finding 20 conclusively establishes the periods for which Sandhu violated statutory limits on post-retirement employment and requires his reinstatement to active membership during precisely these periods. This argument is meritless... Complainant specifically declined in the prior administrative proceeding [on common law versus independent contractor status] to litigate the appropriate remedy if any of Sandhu’s employment violated statutory limits on post-retirement employment. For this reason, the prior proceeding offered no party any opportunity to present evidence, and offered the CalPERS Board no opportunity to consider, whether applying the reinstatement remedy to one period of post-retirement employment might affect employment limitations for other periods. Complainant cannot foreclose consideration of this question simply by splitting the administrative proceeding into multiple phases ” P. 59, ¶ 21. [Emphasis added.]

¹ This dispute has been exhaustively litigated between 2021 and 2025. The Board’s employment status decision was overturned by the Sacramento Superior Court in *Linda Abid-Cummings v. CalPERS*, Case No. 34-2022-80003798 but affirmed for these four individuals. Subsequent judicial appeals were denied. If CalPERS had not precluded adjudication of Respondents’ defenses, four years of the parties’ time and expense and judicial resources would likely have been unnecessary.

² And see Souza at p. 63, ¶¶ 32-33 (filing of statement of issues in 2020 was time-barred as statute of limitations expired on or before July 14, 2018); Dowsell at p. 66, ¶¶ 39-40 (Dixon employment ended July 1, 2015 and three-year limitation ended on or before July 2, 2018, long before 2020 filing of statement of issues); Breeze at p. 68, ¶¶ 46-47 (Atascadero employment ended November 6, 2014 and 2020 statement of issues was far beyond time limit of November 6, 2017).

II. THE ALJ CORRECTLY DETERMINED THAT GOVERNMENT CODE SECTIONS 20160 AND 20164 HARMONIZE TO ESTABLISH THE 3-YEAR STATUTE OF LIMITATIONS AND BAR ALL IMPOSED PENALTIES.

The Administrative Law Judge (ALJ) correctly concluded that the penalties were time-barred by the applicable statute of limitations, in the absence of Board action defining the applicability of a statute of limitations to unlawful post-retirement employment.

1. Government Code section 20160 applies to correct a pension error or omission.

The ALJ rejected CalPERS argument that no statute of limitations applied as it was not “correcting” “errors or omissions:”

“Complainant argues that Government Code section 20160 [to correct errors or omissions] has no relevance to this matter, because rather than seeking to correct any error or omission, complainant seeks a remedy described in Government Code sections 21202 and 21220. ...the revisions to CalPERS records that complainant seeks would be not only unnecessary but unlawful unless those records were somewhat incorrect...complainant contends that respondents...erred by engaging in employment that exceeded statutory limits on post-retirement employment without reinstating to active membership; and complainant seeks to correct this alleged error by reinstating them to active membership and then permitting them to re-retire...” P. 53, ¶ 2.

2. CalPERS staff cannot read out of the law GC section 20164’s statute of limitations.

The ALJ correctly concluded that Government Code section 20164(b)(1) imposed a three-year statute of limitations by which CalPERS staff could have, yet failed, to forcibly reinstate Respondents into active membership or to seek recovery of pension reimbursement and employee/employer contributions. The ALJ noted that subdivisions (c) and (d) provide a ten-year statute of limitations commencing only upon discovery by CalPERS of a death, remarriage or fraud, none of which are involved in this matter. Of import, the ALJ observed that:

“Sandhu believed in good faith when he performed the work described in Finding 13 that he was neither a legal nor a common-law employee of any of the cities for which he worked. For this reason, he also believed in good faith that statutory limitations on post-retirement employment for CalPERS retirees did not govern his work with these cities. *He testified credibly and without contradiction that if he had believed or suspected otherwise, he would have either declined these work opportunities or altered his working arrangements to conform to statutory limitations.*” P. 6, ¶ 14.³ [Emphasis added.]

³ Likewise, the ALJ also noted the good faith intentions of Souza (p. 20, ¶ 51) and Dowswell (p. 26, ¶ 68) to which their hearing testimony was uncontroverted. Mr. Breeze is deceased.

The ALJ then concluded:

“For this reason, and because Government Code section 20164(b) expressly omits any similar discovery rule, the limitations period applicable to CalPERS’s effort to collect from any respondent in this matter is three years: three years after the date of overpayment by CalPERS to the retirees, or three years after the date that payment from the retirees or cities to CalPERS should have occurred.” P. 56, ¶ 12.

3. **The ALJ properly concluded that whether CalPERS staff held statutory discretion or not to order mandatory reinstatement, all such action was time-barred.**

Government Code section 21202 was amended as of January 1, 2022 to provide CalPERS discretion as to whether mandatory reinstatement is appropriate. While recognizing that the alleged violations predate this amendment, the ALJ rejected CalPERS staff argument that it had “no discretion” as to whether to reinstate these retirees:

“Instead, as summarized in Findings 1, 33, 60, 85 and 102, complainant waited until on or after April 2, 2025, to offer respondents any such opportunity [to challenge their involuntary reinstatement]. Under these circumstances, the versions of Government Code section 21202 and 21220 that were in effect on April 2, 2025 govern the available remedies in this matter.” P. 56-57, ¶¶ 13-15.⁴

III. **THE PROPOSED DECISION IS WELL-REASONED AND UNAMBIGUOUS.**

The ALJ’s legal analysis rests upon well-established principles of statutory interpretation:

- Although the employment status decisions rendered by this Board in 2021 are final, “these decisions do not establish that CalPERS must reinstate Sandhu, Souza, Dowswell, or Breeze to active CalPERS membership...”P. 70, ¶ 53.

⁴ Even if the statutory amendment were not controlling, the ALJ found that all actions by CalPERS are time-barred:

“...CalPERS may recover nothing from any respondent even if the versions of Government Code section 21202 and 21220 that were in effect before January 1, 2022, control the available remedies. *With respect to every respondent, complainant’s failure to pursue any of the potentially available remedies for excessive post-retirement employment promptly and carefully forecloses any recovery now.*” P. 57, ¶ 16 [Emphasis added.]

- “CalPERS staff members’ actions to recover alleged overpayments from respondents Sandhu, Souza, Dowswell, and Breeze, and to modify [their] retirement allowances prospectively, were premature.” P. 71, ¶ 55.
- “Further, in light of the matters stated in Findings 17, 31, 38, 45, and 52 through 54, *no legal authority supports these actions. CalPERS must reverse these actions.*” P. 71, ¶ 55.
- Respondents [] need not reimburse CalPERS for any retirement allowances received during periods of excessive post-retirement employment between 2011 and 2016. Decision at p. 70, ¶ 52.

IV. CalPERS STAFF DECISIONS MUST FOLLOW THE LAW.

The untimely application of the penalties here are not grounded on any statute in the PERL or PEPPRA.⁵ Despite repeated arguments that no statute of limitations applied to penalties for alleged unlawful employment, CalPERS legal and program staff could not support their proposition by identifying any Board precedential decision, or duly adopted regulation under the California Administrative Procedure Act, Government Code § 11346.5, nor any relevant statute.

CalPERS interpretation of pension law is entitled to due consideration, not deference.⁶ In defending legal challenges to its decision-making CalPERS frequently defends its actions by arguing that while interpretation of pension rules is a question of law, its interpretation must be given great weight as an agency charged with administering the PERL and PEPPRA. To the contrary, deciding whether a statute of limitations governs this case is not an analytic exercise *in which CalPERS staff have greater institutional expertise than a court as to what penalties are constitutionally or statutorily compliant. As our Supreme Court instructs,*

“...Quasi-legislative administrative decisions are properly placed at that point of the continuum at which judicial review is more deferential; ministerial and informal action do not merit such deference, and they lie toward the opposite end of the continuum.” *Yamaha Corporation of America v. State Board of Equalization* (1998) 19 Cal.4th 1, 7.

Considered alone and apart from the context and circumstances that produce them, agency interpretations are not binding or necessarily even authoritative. *Yamaha, supra*, at 8. Here CalPERS staff failed to exercise any analysis of the validity and appropriateness of the range of penalties; the staff apparently interpreted the statutes to arrive at certain conclusions as to Respondents’ liability and assessed the penalties accordingly. As *Yamaha, supra*, 19 Cal.4th at

⁵ Government Code sections 20000 et seq. and 7522 et seq.

⁶ See e.g. *Alameda County Deputy Sheriff Association v. Alameda County Employees’ Retirement Assn.* (2018) 19 Cal.App.5th 61, 91; *Irvin v. Contra Costa County Employees’ Retirement Assn.* (2017) 13 Cal.App.5th 162, 172-173.

p. 9 noted, “[f]ar from being ‘the equivalent of a regulation or ruling of general application,’ the Board’s argument was ‘merely its litigating position in this particular matter.’” That is an apt conclusion for the proposed decision before this Board.

Moreover, CalPERS staff have no institutional advantage in determining the legality of penalties for unlawful employment. *Yamaha, supra*, 19 Cal.4th at 8, 19. See also *Irvin v. Contra Costa Cnty. Employees’ Ret. Ass’n* (2017) 13 Cal.App.5th 162, 173 (declining to defer to a county retirement board’s interpretation of “surviving spouse” where the issue “is not a technical issue of pension administration, the particular area of the board’s expertise...”). See also *Burnham v. Public Employees’ Ret. Sys.* (2012) 208 Cal.App.4th 1576, 1583 n.2 (“because the plain language of the statute requires filing of the declaration to establish a domestic partnership, we reject CalPERS’ argument we should afford great weight and deference to their contrary interpretation of the statute.”). Further, CalPERS interpretation of statutory language is entitled to less deference when not adopted as a regulation. See e.g. *Bernard v. City of Oakland* (2012) 202 Cal.App.4th 1553, 1566:

“...it is well established that an agency’s ‘adoption of an interpretation consistent with the language and intention of a law and existing regulations as a prelude to enforcement does not require compliance with the APA.’ However, when not adopted as a formal regulation, an agency’s interpretation of statutory language is entitled to less deference.”

V. CONCLUSION

Respondents respectfully request that the Board adopt ALJ Cox’s Proposed Decision correctly applying the three-year statute of limitations and reversing all time-barred actions taken by CalPERS staff.

LAW OFFICES OF SCOTT N. KIVEL







Scott N. Kivel

PROOF OF SERVICE

I, Rebecca J. Church, declare:

I am a resident of the State of California and over the age of 18 years, and not a party to the within action; my business address is 1945 Piner Road, Spc. 11, Santa Rosa, CA 95403. On the date set forth below I served the attached **MARCH 23, 2026 LETTER TO CALPERS BOARD OF ADMINISTRATION** on the interested parties in said action, by placing a true copy thereof as indicated below, addressed as follows:

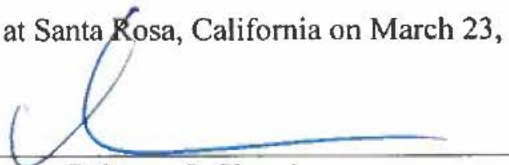
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Douglas Breeze Estate of Douglas Breeze c/o Jonnalyn Cabarles-Breeze 	Tarlochan Sandhu 
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(X) BY E-MAIL OR ELECTRONIC TRANSMISSION: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail address listed above. 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.

Personnel Officer City of Capitola 420 Capitola Ave. Capitola, CA 95010	City Manager Town of Los Altos Hills 26379 Fremont Road Los Altos Hills, CA 94022
Personnel Officer City of Union City 34009 Alvarado-Niles Road Union City, CA 94587	Personnel Officer City of Alameda 2263 Santa Clara Avenue, Rm. 290 Alameda, CA 94501
Personnel Officer City of Hughson P.O. Box 9 Hughson, CA 95326	Personnel Officer City of Dixon 600 East A Street Dixon, CA 95620
Personnel Office City of Atascadero 6500 Palma Avenue Atascadero, CA 93422	

(X) BY MAIL: I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Mail, which envelope was then sealed and placed in a box at my business address that is designated for collection of mail. I am familiar with the practice of this business for the collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service at Santa Rosa, California the same day as it is placed for collection.

Executed at Santa Rosa, California on March 23, 2026.



Rebecca J. Church

March 26, 2026

VIA EMAIL

board@calpers.ca.gov

Board Services Unit Coordinator
California Public Employees' Retirement
System
Post Office Box 942701
Sacramento, CA 94229-2701

Re: *Dowswell, et al. v. CalPERS, Respondent's Argument*
Client-Matter: DI050/013

To Whom It May Concern:

The City of Dixon ("City") submits this argument requesting that the California Public Employees' Retirement System ("CalPERS") Board of Administration ("Board") adopt the Proposed Decision issued by the Administrative Law Judge ("ALJ") in the above-referenced matter.

The Proposed Decision correctly concludes that Government Code section 20164 bars CalPERS from collecting retirement allowance payments made more than three years before the filing of the Statement of Issues. In addition, CalPERS is barred from reinstating the employees or collecting contributions. The Proposed Decision's conclusions follow from the plain language of the Public Employees' Retirement Law ("PERL"), the structure of the statutory scheme, and settled principles of statutory construction. It also avoids the textually unsupported and administratively unworkable distinctions advanced by CalPERS staff.

I. FACTUAL BACKGROUND

On January 10, 2020, more than four years after the alleged violations, CalPERS issued its determination finding that Mr. Dowswell worked as a common-law employee of the City and was in violation of the post-retirement work restrictions from April 28, 2015 through July 1, 2015. CalPERS did not file the initial Statement of Issues concerning Dowswell until roughly September 22, 2020, more than five years later. The Amended Statement of Issues was not filed until roughly March 25, 2021.

On November 17, 2021, the CalPERS Board of Administration adopted a proposed decision in this matter as its own decision with minor technical corrections with respect to the underlying question of whether Dowswell was a common-law employee of the City. The

Decision determined that Dowswell's employment violated the post-employment work restrictions from April 28, 2015 through July 1, 2015. However, the original proposed decision did not address the question of any payments or contributions owed.

II. LEGAL ARGUMENT

The plain language of Government Code section 20164 provides a clear statute of limitations that bars CalPERS from collecting payments from any parties in this matter.

The governing statutory text is broad and direct. Government Code section 20164(b) applies "[f]or the purposes of payments into or out of the retirement fund for adjustment of errors or omissions, whether pursuant to Section 20160, 20163, or 20532, or otherwise." Government Code section 20164(b)(1) then provides that, "[i]n cases where this system makes an erroneous payment to a member or beneficiary, this system's right to collect shall expire three years from the date of payment." The Legislature's language is unmistakably expansive. It speaks in terms of payments into or out of the fund, errors or omissions, and listed statutory provisions "or otherwise." That catch-all forecloses any attempt to isolate Government Code section 21220 from the reach of Government Code section 20164 and confirms that the three-year limitations period applies broadly to CalPERS' collection efforts of this kind.

CalPERS' position depends on reading limitations into Government Code section 20164 that the Legislature did not provide. That is not a permissible mode of statutory construction. The statutes can be read in harmony without doing violence to either provision. Government Code sections 21202 and 21220 establish the circumstances under which post-retirement employment may be unlawful and reimbursement may be owed. Government Code section 20164, limits the time within which CalPERS may collect. Those provisions work together in the ordinary way that liability and a statute of limitation work together. CalPERS has not identified any language in Government Code sections 21202 or 21220 stating that they operate notwithstanding Government Code section 20164, nor any language creating a special, unlimited collection period for retired annuitant reimbursements. The Legislature provided no such carve out.

The structure of Government Code section 20164 reinforces the conclusion that the Legislature did not intend a carve out, despite knowing how to do so. The Legislature created a general three-year collection rule, then set out narrow exceptions where a different limitations period or discovery rule applies. Government Code section 20164(c) addresses continued payments after death or remarriage. Government Code section 20164(d) addresses fraud against the system and extends the period to ten years from discovery. Those express carveouts show the Legislature understood how to exempt particular situations from the general rule when it wanted to do so. It is therefore telling that the Legislature did not create a separate exception for reimbursements sought under Government Code section 21220. Under settled principles of statutory interpretation, the inclusion of specific exceptions strongly implies the exclusion of others and prohibits CalPERS from inventing them itself without statutory authorization.

For the same reason, CalPERS cannot imply a discovery rule into Government Code section 20164(b). The Legislature expressly provided discovery rule language in Government Code section 20164(c) and (d), but omitted it from Government Code section 20164(b). That omission must be given effect. CalPERS' policy concern that delayed discovery may limit recovery cannot override the text the Legislature enacted. Statutes of limitation necessarily bar some claims that would otherwise exist. That is their function. The policy balance has already been struck by the Legislature, and neither staff nor CalPERS is free to revise it under the guise of interpretation.

CalPERS' effort to characterize the reimbursement sought here as something other than an erroneous payment or adjustment for an error or omission is likewise unsupported. The statutory scheme does not create the elaborate categories staff attempts to impose. Government Code section 21220 itself uses the ordinary concept of reimbursement of retirement allowance received during unlawful employment. Once CalPERS determines that the allowance was received during a period in which the member was not lawfully entitled to receive it, the payment functions as an erroneous payment within the meaning of Government Code section 20164(b)(1). Staff's attempt to rename the payment as a special type of penalty finds no support in the text. More importantly, it produces irrational results. It would mean that actual fraud against the system is subject to an express ten-year limitations period, but the category staff proposes for retired annuitant reimbursements would be subject to no limitations period at all. Nothing in the PERL supports that incongruous outcome.

The broader rules governing pension legislation point in the same direction. Courts have repeatedly held that ambiguities in pension statutes must be resolved in favor of pensioners. *Hudson v. Board of Admin. of Public Employees' Retirement System* (1997) 59 Cal.App.4th 1310, 1324; *Lazan v. County of Riverside* (2006) 140 Cal.App.4th 453, 459; See also *Ventura County Deputy Sheriffs' Assn. v. Board of Retirement* (1997) 16 Cal.4th 483, 490.) If CalPERS believes some ambiguity exists at the margins of section Government Code 20164, that ambiguity cannot be resolved by creating a harsher, unwritten collection rule adverse to retirees. Nor can CalPERS rely on generalized references to the "spirit" of the law or the avoidance of supposed windfalls. Those arguments are not substitutes for statutory text, and they prove too much. Every statute of limitations can be described as conferring a windfall on the party protected by it. Yet the Legislature still enacted one here, and even provided a limitations period in cases of fraud. The answer to any perceived policy concern lies with legislative amendment, not administrative expansion.

Administrative law principles independently require adoption of the Proposed Decision. CalPERS may administer the PERL, but it may not enlarge its own authority beyond what the Legislature has conferred. An agency interpretation that conflicts with or exceeds the governing statutory scheme is invalid. (See *Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Association* (2020) 9 Cal.5th 1032.) Here, the enabling legislation supplies a limitations rule. CalPERS does not have discretion to disregard that rule, invent a new exception, or treat its own preferred policy outcome as the governing law. Government Code section 20164(e) authorizes CalPERS to determine which statute of

Board Services Unit Coordinator

Re: *Dowswell, et al. v. CalPERS, Respondent's Argument*

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limitations applies in the first instance, but that does not authorize arbitrary selection of a limitations period untethered to the statutory text. The determination remains reviewable and must be consistent with the PERL.

The Board also should not be persuaded by the nonprecedential *Lang* decision. As staff acknowledges, *Lang* is not precedential and does not bind the Board or the Office of Administrative Hearings. On the merits, its reasoning is thin. It does not grapple with the breadth of Government Code section 20164, the significance of the “or otherwise” language, the Legislature’s express carveouts in Government Code section 20164(c) and (d), or the settled rule that ambiguities in pension legislation are resolved in favor of pensioners. It therefore provides no persuasive basis to reject the Proposed Decision here.

Finally, CalPERS bore the burden of proving not only the asserted violation, but also its legal authority to collect the challenged payments notwithstanding the statute of limitations. On that point, staff failed to carry its burden. The statutory text, read as a whole, forecloses the unlimited recovery theory advanced in this matter. The Proposed Decision reached the correct result by applying the statute as written rather than rewriting it to fit a desired policy outcome.

III. CONCLUSION

Based on the above, the City requests that the CalPERS Board adopt the Proposed Decision. Government Code section 20164 establishes a broad three-year limitation on CalPERS’ right to collect erroneous payments, subject only to narrow exceptions not present here. Government Code sections 21202 and 21220 do not displace that rule.

Very truly yours,

LIEBERT CASSIDY WHITMORE


Michael D. Youril

MDY:cgd